

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT VIHIGA
CRIMINAL CASE NO E003 OF 2025

REPUBLIC
VERSUS

TONNY LOVONI ODEDE.....
ACCUSED

SENTENCE

1. The Accused person herein was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 (Laws of Kenya). He entered into a Plea Bargain Agreement on 27th November 2025 whereupon this court convicted him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.
2. The facts of the case were that on the material night of 14th June 2018 at around 2030 hours, Stancious Mukabwa (hereinafter referred to as the “deceased”) was in his house with his wife Pamala Salano and nephew, Mark Khaega, when they heard people knocking on the door calling out the deceased’s name. One of them introduced himself as Mugami, a neighbor and stated that he wanted assistance since the deceased was a Pastor.
3. The deceased’s wife opened the house and immediately, the men entered the house while armed with pangas and metal bars and threatened to cut her. They also pushed her nephew on the floor and demanded for money from the deceased. They then took the deceased’s wife’s handbag which was on the table and contained

Kshs 7000/= and other personal documents. They also took the deceased's mobile phone, make HTC.

4. As they left the house, they dragged the deceased out and pushed him on the ground. A struggle ensued between them and the deceased's wife and the nephew managed to flee towards the home of their neighbor, Erick Andai, which was about thirty (30) meters away. The said Erick Andai who heard the commotion switched on the electric security lights and came out of the house. He was able to identify the Accused person herein who was his neighbour, among the four (4) men. They **(sic)** all then raised an alarm and the attackers left the deceased and ran in different directions.
5. They rushed immediately to where the deceased was lying and realised that he was unconscious. They also noted that he had a deep cut wound on the head which was bleeding profusely and they administered first aid on him. The said Erick Andai called Bishop Achango who took the deceased to Kaimosi Jumia Hospital whereafter he was referred to Eldoret Moi Teaching and Referral Hospital.
6. Police officers from Chavakali Patrol Base were informed and they visited the scene where they recovered one (1) black rubber shoe and a hammer left behind by the attackers. The said Eric Andai was able to identify that the shoe belonged to the Accused person.
7. On 15th June 2018, the Accused person was arrested by members of the public who wanted to lynch him. He was, however, rescued by the Assistant Chief and escorted to Chavakali Patrol Base.

8. The deceased passed on 19th June 2018 while undergoing treatment and a report was made at Chavakali Patrol Base. Investigations commenced. After the investigations were concluded, the Accused person was charged with the offence of murder.
9. A postmortem examination on the body of the deceased was carried out on 20th June 2018. The Pathologist formed the opinion that the cause of the deceased's death was due to raised intracranial pressure due to intracranial bleeding due to sharp force trauma. The Postmortem Report dated 20th June 2018 was produced as Exhibit 1.
10. Having entered into a Plea Agreement, the Accused person proposed that he serves a sentence of ten (10) years while the Prosecution recommended a sentence of twenty (20) years imprisonment.
11. In his mitigation, the Accused person expressed deep remorse for having killed the deceased. He admitted that his actions were uncalled for. He regretted what he had put the deceased's family through and sought their forgiveness. He attributed his commission of the offence to the fact that he was an orphan, which made him do certain things, peer pressure, lack of proper judgment and lack of role models who could have guided him properly.
12. He pointed out that he was planning to change his ways. He sought that the court be lenient on him and mete out against him a non-custodial sentence and be attached to any of the offices of the local administration. He explained that his younger siblings were suffering because he was no longer providing for them. He prayed

that he be given an opportunity to take care of them and to guide them properly.

13. On its part, the Prosecution submitted that in as much as the Accused person was remorseful, a life was lost. It pointed out that he carried a heavy sense of guilt for his actions and could not even face the deceased's family which had never recovered. It added that the deceased's wife was, in fact, emotional during the interview. It urged this court to mete out a custodial sentence of twenty (20) years that it had sought in the Plea Agreement for the family to feel that judgment was done.

14. According to the Pre-Sentence Report of J. Sahani, Probation Officer, Vihiga County that was dated 7th January 2026 and filed on 9th January 2026, the Accused person was thirty-two (32) years old. He attended Serve Academy, Sabatia and Chavakali High School but was expelled while in Form Four (4). His mother looked for a study centre, Wangulu Secondary School awaiting for the exams which he did at the DO's office Sabatia.

15. Thereafter, he moved to Nairobi where he worked in construction sites between 2014 and 2017. He returned home in 2017 and engaged in casual work and farming. He had one child. He was born a Christian but converted to Islam. The social inquiry indicated that he consumed alcohol and bhang moderately.

16. He admitted having committed the offence jointly with others not before the court stating that it was a well planned inside job

involving the deceased's spouse and a male friend namely Aggrey Ambwere. He prayed for a lenient jail term.

17. His family vouched for him being given a second chance, citing that he was helpful to the provision of basic needs to his mother and had never been implicated in any other offence save for the offence herein. They added that he committed the offence while in his youthful stage that comes with so many challenges.

18. The local administration and the community reported that the Accused person started engaging in criminal activities such as theft and possession of narcotic drugs while in school which led to him being expelled. They pointed out that he was a member of a criminal gang that used to terrorise the villages. They voiced their objection to his release on non-custodial sentence pointing to his questionable character and the cultural hostility that forced his family to relocate.

19. The Probation Office recommended for a non-custodial sentence on the part of the Accused person to ensure accountability for the loss of life, provide justice and closure to the victim's family and deter similar violent crimes and safeguard community peace.

20. Notably, sentencing is one of the most intricate aspects of trial. Indeed, a trial does not end unless a sentence has been meted out. The principle of sentencing is fairness, justice, proportionality and commitment to public safety. The main objectives of sentencing are retribution, incapacitation, deterrence, rehabilitation and reparation. The Sentencing Policy Guidelines in Kenya have added community

protection and denunciation as sentencing objectives. The objectives are not mutually exclusive and can overlap.

21. It was also important that the sentence communicate to the community, condemnation of his criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence. The sentence also had to be one that was hinged on retributive justice for the secondary victims.

22. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of his offence at the time of sentencing him, chances of the accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed.

23. Killing someone is an abomination in the society and that explained why the local administration and community did not want him released on a non-custodial sentence. Justice not only needed to be done but it had to be seen to be done.

24. It was clear from the facts of the case and the Pre-Sentence Report that the Accused person jointly with others, killed the deceased without any provocation. The deceased was a Pastor. He had held a Harambee towards the purchase of Church land and raised approximately Kshs 1, 200,000/= which the Accused person intentionally planned to rob him on the material night. During the attack, the Accused person hit the deceased using a jembe while his Co-Accused hit the deceased at the back of the head using a claw bar (iron rod with claws).

25. The Accused person had initially been charged with and convicted of the offence of robbery with violence. He appealed his conviction and sentence to this court. This court allowed his appeal in **Odede v Republic (Criminal Appeal 27 of 2021) [2023] KEHC 20941 (KLR) (27 July 2023) (Judgment)** and ordered that he be retried. However, he jumped bail and was re-arrested almost two (2) years later. It was then that he was charged with the offence of murder which was subsequently reduced to the offence of manslaughter.
26. If the matter had proceeded as a murder case, this court would have meted out on him a stiffer sentence. The prescribed sentence for the offence of murder under Section 204 of the Penal Code is death. This court had at the back of its mind that the sentence that was prescribed for the offence of robbery with violence under Section 296(2) of the Penal Code Cap 63 (Laws of Kenya) that actually fitted the circumstances of this case was death. Whichever way this court looked at this matter, it did not find a non-custodial sentence to have been suitable and/or justified in this matter.
27. Having considered the facts of this case, the Accused person's mitigation, the Prosecution's response thereto, the Pre-Sentence Report and bearing in mind that sentencing was the sole discretion of the court, this court came to the firm conclusion that a sentence of twenty (20) years imprisonment was suitable and adequate herein purely because the Accused person entered into a Plea Bargain Agreement.

28. Going further, this court was mandated to consider the period that he spent in remand while his trial was on going in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

29. The said Section 333(2) of the Criminal Procedure Code provides that:-

“Subject to the provisions of section 38 of the Penal Code (cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody”

(emphasis court).

30. Further, Clause 4.6.20 (ix) of the Judiciary Sentencing Policy Guidelines provides that:-

“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:...

Time already spent in prison by the convict...”

31. The requirement under Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in **Ahamad Abolfathi Mohammed & Another vs Republic [2018] eKLR.**

32. The Accused person was arrested on 14th June 2025. His application for bond was declined. He was convicted on 27th November 2025. The period that he spent in remand while his trial was ongoing, therefore, ought to be taken into consideration while computing his sentence.

DISPOSITION

33. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to twenty (20) years imprisonment to run from the date of this Sentence.

34. For the avoidance of doubt, the period between 14th June 2025 and 15th January 2026 be and is hereby taken into account while computing his sentence in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

35. It is so ordered.

DATED and **DELIVERED** at **VIHIGA** this **16th** day of **January** 2026

J. KAMAU
JUDGE