

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT VIHIGA
CRIMINAL CASE NO E002 OF 2025

REPUBLIC

VERSUS

STEPHEN LWANDA.....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 21st October 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 day of 26th March 2025, at about 1830 hours, the Accused person herein had a disagreement with his grandmother, Mirriam Makungu, over Kshs 200/= which his father, Albert Odem, had sent his grandmother for school fees for his brother, Vanon Magomere.
3. The quarrel attracted his uncle, Paul Iniaru Anira (hereinafter referred to as "the deceased"), who was in his house about ten (10) meters from his grandmother's home. The deceased asked him why he was disrespecting his grandmother. The deceased who was standing next to him suddenly fell down and then stood up holding his head while bleeding. Grace Mireja, a neighbour, who had witnessed what had happened raised an alarm. Members of the

public arrived at the scene and administered first aid on the deceased.

4. The deceased was then rushed to St Teresa Hospital in Tigoi and then referred to Vihiga County Referral Hospital. He was stitched on the left side of the head where there was a stab wound and thereafter he was referred to Jaramogi Oginga Odinga Teaching and Referral Hospital. He died on 28th March 2025 while undergoing treatment.
5. A report was made at Gambogi Police Station and investigations commenced. Police officers visited deceased's home but the Accused person was not there. On 30th March 2025, the Accused person surrendered himself at Huruma Police Station in Nairobi and told the police that he had killed the deceased. The following day on 31st March 2025, police officers from DCI Hamisi arrived and escorted him to Serem Police Station. He was interrogated and he disclosed to the officers where he had placed the murder weapon, a knife which was wrapped with a mosquito net on the handle. When they found it, the Accused person positively identified it. After the investigations were concluded, the Accused person was charged with the offence of murder.
6. A postmortem examination on the body of the deceased was carried out on 9th April 2025. The Pathologist formed the opinion that the cause of the deceased's death was due to traumatic brain injury secondary to assault. The Postmortem Report dated 9th April 2025 was produced as Exhibit 1.

7. Having entered into a Plea Agreement, the Accused person proposed that he serves a sentence of five (5) years while the Prosecution recommended a sentence of fifteen (15) years imprisonment.
8. In his mitigation, the Accused person asked this court to consider that he was young at the time he committed the offence, that he was genuinely remorseful, that the offence was committed within a family context and that it was not premeditated. He pointed out that he was and would continue carrying a heavy burden for the rest of his life having killed his paternal uncle. He stated that that only distinguished from murder or pre-meditated violence.
9. He attributed his immaturity which led to poor judgment due to his young age and he could not foresee the consequences of his actions. He averred that he acknowledged the gravity of the offence and that his remorsefulness was not only verbal but that he had cooperated with the authorities, he had committed himself to self-improvement and had taken steps towards his rehabilitation. He emphasised that he committed the offence during his formative years when his moral culpability was reduced. He asked this court to mete out a lenient and proportionate sentence and consider the period that he had spent in remand.
10. On its part, the Prosecution submitted that the offence that the Accused person committed showed that he had anger issues. It pointed out that in the Pre-Sentence Report, the community had observed that he was short-tempered and confrontational. It stated

that his family was not willing to accept him back in the community for having killed his paternal uncle. It urged this court to mete out on him the sentence of fifteen (15) years that it had recommended in the Plea Agreement.

11. According to the undated Pre-Sentence Report of Mariam Korir, Probation Officer, Vihiga County that was filed on 14th November 2025, the Accused person was twenty-one (21) years old. At the time of his arrest, he was a Form Four (4) student at Jepkoyai Secondary School. Prior to joining secondary school, he attended Tigoi Primary School. Outside school, he engaged in crushing stones for sale within Malindi village and used the income that he earned to support their household. He was unmarried and had no children. He had no history of consuming alcohol or drugs.

12. He was a Christian and engaged in recreational activities such as playing football with his friends. He had no history of previous criminal conduct. He admitted having committed the offence and expressed remorse for his actions.

13. The secondary victim who was both the deceased's mother and the Accused person's grandmother expressed deep grief over the incident. She stated that the deceased's wife had recently died and that the family believed that her death may have been triggered or worsened by stress resulting from this offence. She confirmed that the incident had caused lasting pain and division within the family. She added that the Accused person would not be allowed to return to the homestead and the community was still angered by the

incident. She expressed fears that should he return, his safety would be at risk.

14. Relatives from his maternal side, spoke positively of his character and potential rehabilitation. They expressed willingness to support him during reintegration and offered to host him at their home in Lubao, Kakamega County should the court consider a non-custodial sentence.

15. The local administration and the community were in agreement that the offence was committed within the family setting and that tension at home remained high. They opined that releasing him at this stage could expose him to hostility or even retaliatory harm.

16. The Probation Office recommended a three (3) year probation order anchored on supervised placement away from the immediate homestead and preferably reintegrated to maternal relatives who had expressed willingness to accommodate him.

17. 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.

18. 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.

19. 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.

20. Killing someone is an abomination in the society and that explained why the deceased's family 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.

21. It was clear from the facts of the case and the Pre-Sentence Report that the Accused person killed the deceased. The deceased who was his paternal uncle. Although the deceased asked him by inquiring why he was being disrespectful to his grandmother, he ought not to have stab him on the head. This was not to restrain him from beating him. It was intended to cause him harm. The extreme anger was not worth the trouble.

22. Although, the Probation Office had recommended a non-custodial sentence, this court noted from the record that the Accused person was not a minor at the time of the incident. He was well over eighteen (18) years of age and was, therefore, an adult at the material time. A non-custodial sentence was, therefore, not a prudent recommendation in the circumstances of this case.

23. 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 twelve (12) years imprisonment was suitable and adequate herein purely because the Accused person entered into a Plea Bargain Agreement. If the matter had proceeded as a murder case, this court would have meted out on him a stiffer sentence.

24. 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).

25. 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).

26. 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...”

27. 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.**

28. The Accused person was arrested on 30th March 2025. His application for bond was declined. He was convicted on 21st October 2025. The period he spent in remand, therefore, ought to be taken into consideration while computing his sentence.

DISPOSITION

29. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to twelve (12) years imprisonment to run from the date of this Sentence.

30. For the avoidance of doubt, the period between 30th March 2025 and 14th 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).

31. It is so ordered.

DATED and DELIVERED at VIHIGA this 15th day of January 2026

**J. KAMAU
JUDGE**

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