

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT VIHIGA**  
**CRIMINAL CASE NO 33 OF 2021**

**REPUBLIC**  
**VERSUS**

**WYCLIFFE MASINDE KUYA ALIAS THOMAS**  
**OTANGA.....ACCUSED**

**SENTENCE**

1. On 26<sup>th</sup> November 2025, this court convicted the Accused person herein for the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code having been reduced from the charge of murder contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 (Laws of Kenya) under Section 215 of the Criminal Procedure Code Cap 75 (Laws of Kenya).
2. In his mitigation, the Accused person said that he was a first offender. He expressed remorse for having executed his duties as a Village Elder, a position that he said he had executed responsibly. He explained that he was only trying to keep peace during the funeral but regretted that he took the law into his own hands.
3. He stated that he was elderly and that he was the sole bread winner of his family that consisted of his wife and four (4) children who relied on him. He pointed out that the Pre-Sentence Report was positive and thus urged this court to sentence him to Probation for a period of three (3) years as had been proposed by the Probation Office.
4. On its part, the Prosecution stated that the Accused person was charged with a serious offence and that the fact that he was elderly

was not a leeway for the court to be lenient on him. It stated that although the Probation Report was lenient on him, the court ought to mete out on him a sentence that was commensurate with the offence that he committed when balancing the views of the secondary victims and those of the community.

5. According to the Pre-sentence Report of Oliver Simiyu, Probation Officer, Vihiga County dated 14<sup>th</sup> January 2026 and filed on 16<sup>th</sup> January 2026, the Accused person was sixty-nine (69) years old. He studied at Ebusiloli Primary School and Ebusiloli Secondary School where he dropped out in Form Two (2) due to lack of school fees. He moved to Nairobi in 1976 where he secured a job as a salesperson and worked until 1991. Thereafter, he returned home where he engaged in farming until his arrest.
6. He was married and had six (6) children but two (2) of them had passed away. He had stopped using bhang and was only currently a cigarette smoker and a consumer of alcohol. He was said to have been a Christian and that before his arrest, he had been assigned the role of a Village Elder in the community. He had no previous convictions or criminal records. He had a urinal problem and age-related complications.
7. He admitted having committed the offence but stated that the circumstances under which the offence occurred were unclear. He regretted the loss of the deceased who was his nephew and sought the forgiveness of the court and that of the deceased's family. He averred that he did not have ill intentions to cause the deceased's

death and that his only intention was only to bring order at the funeral.

8. The deceased's wife expressed grief and disappointment at the deceased's death. She stated that she was overwhelmed with responsibility of raising the children as a single mother. She exonerated the Accused person from having caused the deceased's death and contended that he was only preventing the deceased from creating disturbance. She averred that the deceased's death could have been caused by alcoholic related complications as the deceased was very drunk at the material time.
9. The local administration and the community portrayed the Accused person as a person who had no criminal records and had leadership responsibility in the village. They said that there was no hostility if he was to return to the community. They urged the court to consider his elderly age, lack of criminal record and commit him to community-based rehabilitation.
10. The Probation Office recommended a three (3) years' probation order on the part of the Accused person as a form of his community rehabilitation.
11. Notably, sentencing was one of the most intricate aspects of trial. Indeed, a trial does not end unless a sentence had been meted out. The principle of sentencing was fairness, justice, proportionality and commitment to public safety. The main objectives of sentencing were retribution, incapacitation, deterrence, rehabilitation and reparation. The Sentencing Policy Guidelines in Kenya had added

community protection and denunciation as sentencing objectives.

The objectives were not mutually exclusive and could overlap.

12. 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.

13. 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 an accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed. Killing someone was an abomination in the society. Justice not only needed to be done but it had to be seen to be done.

14. It was clear from the facts of the case and the Pre-Sentence Report that the Accused person had disciplined the deceased, who was his nephew, during a funeral for creating disturbance. Although the deceased was drunk, the Accused person ought not to have used excessive force to discipline him. Indeed, hitting him on the head was intended to cause him harm. The extreme anger was not worth the trouble.

15. The local administration, community and the Probation Office vouched for him and recommended that he be sentenced to a non-custodial sentence. The deceased's wife seemed to exonerate him and opined that the deceased may have died due to alcohol related complications.

16. The severe head injury that the deceased suffered, as was evidenced in the Postmortem Report, was sufficient to demonstrate the excessive force the Accused person used to discipline him. As the deceased died after being beaten by the Accused person, in the absence of any other scientific proof, the assertions by the deceased's wife that the deceased may have died due to alcohol related complications were neither here nor there. In any event, the comments were not part of the evidence that was adduced and were made during the social enquiry. The Accused person could not, therefore, escape liability for having caused the deceased's death.

17. It is important to point out that the views of the immediate family members of the deceased to wit, his mother and siblings, were not included in the Pre-Sentence Report. The Probation Report indicated that they were not interviewed because they were not currently living in the area and their contacts were not provided. In the absence of their views, this court was reluctant to rely on the views of the deceased's wife only as there was no mother who could justify the death of his or her child.

18. However, since the deceased did not die immediately and it will never be known if he would have survived had he received medical attention immediately, this court took the view that it could balance that period and his death not to mete out on the Accused person a stiff sentence.

19. Having considered the facts of this case, the Accused person's mitigation and his elderly age, 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 five (5) years imprisonment was suitable and adequate herein.

20. 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).

21. 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).

22. 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...”**

23. 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.**

24. The Accused person was first arraigned in court on 22<sup>nd</sup> October 2018. He was released on bond on 28<sup>th</sup> December 2018. He was convicted on 26<sup>th</sup> November 2025 and remanded again. The period he spent in remand, therefore, ought to be taken into consideration while computing his sentence.

**DISPOSITION**

25. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to five (5) years imprisonment to run from the date of this Sentence.

26. For the avoidance of doubt, the period between 22<sup>nd</sup> October 2018 and 28<sup>th</sup> December 2018 and between 26<sup>th</sup> November 2025 and 11<sup>th</sup> February 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).

27. It is so ordered.

**DATED** and **DELIVERED** at **VIHIGA** this **12<sup>th</sup>** day of **February**  
2026

**J. KAMAU**  
**JUDGE**

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