

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT VIHIGA**  
**CRIMINAL CASE NO 7 OF 2022**

**REPUBLIC**  
**VERSUS**

**WILFRED MUYOMA OMBANJO.....**  
**.....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 5<sup>th</sup> 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 day of 30<sup>th</sup> December 2018, the Accused person herein had a quarrel with his wife, Clare Aneta Vulimo (hereinafter referred to as the “deceased”) accusing her of aborting a five (5) months’ pregnancy. The Accused person’s mother, Esther Mmbone, arrived at home at 2000 hours and found him and the deceased quarreling inside their house which was locked from inside. She pleaded with him to open the door but he refused to do so.
3. His sister-in-law, Nancy Apwoka, also went to his house after hearing the quarrel. She peeped through the door and saw him slapping and kicking the deceased. She knocked on the door and ordered him to open the door but he refused to do so. She stayed at the door and after a while, he opened the door while armed with a panga and told

her to go away. She went to her mother-in-law's house and informed her of what was happening.

4. After about thirty (30) minutes, the Accused person came out of his house and shouted, "Nimemaliza" and went away. His mother and sister-in-law rushed to his house and found the deceased lying down on the floor, unresponsive. His mother rushed to Mahanga Police Post and reported the incident. Police officers accompanied her to the scene and removed the deceased's body which they took to Vihiga County Referral Hospital Mortuary.
5. Investigations commenced on 7<sup>th</sup> January 2019. A postmortem examination on the deceased's body was carried out on the same date. The Pathologist formed the opinion that the cause of her death was asphyxia secondary to comminuted injury following assault. The Postmortem Report dated 7<sup>th</sup> January 2019 was produced as Exhibit 1.
6. 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.
7. In his mitigation, the Accused person told this court that he regretted profusely for having committed the offence. He pointed out that he acted in the heat of the moment after the deceased, who was his girlfriend, told him that she had aborted their pregnancy. He asked that he be given an opportunity to be reintegrated to the

society. He stated that he had apologised to the deceased's family through his family.

8. On its part, the Prosecution submitted that the circumstances of the case were occasioned by anger which showed that the Accused person had anger management issues. It stated that he used a rungu which had nails, an indication that the killing was pre-meditated.
9. It pointed out that the Accused person was a member of a gang known as "42 Brothers" and that he had been sentenced to fifteen (15) years for the offence of defilement. It averred that the Pre-Sentence Report was not favourable and as the family was still traumatised by the events, it urged this court to mete out a sentence that was commensurate with the circumstances of the case which would also enable him to be rehabilitated properly while in custody.
10. According to the Pre-Sentence Report of Debora Okode, Probation Officer, Vihiga County that was dated 5<sup>th</sup> December 2025 and filed on 8<sup>th</sup> December 2025, the Accused person was thirty-seven (37) years old. He attended Mahanga Primary School, Vigena Secondary School, Ebwali Secondary School and completed his Form Four (4) in 2009 in Kuoyo Secondary School.
11. After completing school, he engaged in casual jobs and boda boda work. He later relocated to Nairobi in 2017 for a job at Prime Steel Company where he worked for one (1) year. He returned to the

village in 2018 and continued to engage as a boda boda until his arrest. He was a Christian and was of good health.

12. He was married to the deceased herein but they did not have any children. He, however, had two (2) children before he married her. He engaged in substance abuse especially bhang and had a previous conviction where he was sentenced to fifteen (15) years imprisonment on a defilement case.

13. He admitted having committed the offence stating that the act was not planned but asserted that he pushed the deceased to the ground after she told him that she had aborted their child. He conceded that it was a grave mistake to have committed the act in the heat of the moment. He pleaded for the leniency of the court.

14. His family viewed him as a person who grew up without notable behavior issues and had lived with the deceased in peace. They described the incident as an unintended mistake and pleaded for leniency on his behalf.

15. On the other hand, the secondary victims were emphatic that the deceased lived at home and was not married or cohabiting with the Accused person as he had alleged. The deceased's mother said that she was only informed by the Area Chief that the deceased had been killed by the Accused person who she denied knowing personally or even meeting. She also dismissed his allegations about pregnancy and abortion and contended that the deceased had not been pregnant at any given time.

16. The deceased's family was still very bitter about the incident and were deeply traumatised by her death. It urged this court to sentence the Accused person to life imprisonment arguing that the gravity of the offence and the loss of their daughter warranted the maximum punishment as she was only seventeen (17) years old during the incident.

17. The local administration and the community reported that the Accused person was well known within the area and that his character and attitude was not good as he had been repeatedly involved in criminal activities. They noted that he was a leader of a gang known as "42 brothers", a group that was involved in criminal activities in the community. They pointed out that the community did not want him back as he posed a threat to the safety of the public and would disrupt the peace that had prevailed since his arrest. They opined that he be rehabilitated while in custody.

18. The Probation Office opined that the Accused person was not fit for the immediate return to the society and thus recommended an alternative form of sentence.

19. 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.

20. It was also important that the sentence communicated 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.

21. 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.

22. Killing someone was an abomination in the society and that explained why the deceased's family and community did not want the Accused person released on a non-custodial sentence. Justice not only needed to be done but it had to be seen to be done.

23. It was evident from the facts of the case and the Pre-Sentence Report that the Accused person killed the deceased who he was alleged she was his wife but which her family denied to have been the case. Nonetheless, although she allegedly told him that she had aborted their pregnancy, he had no right to push her on the floor because of the possibilities of her being injured. The force was excessive compared to her intention of going to her mother's house. Indeed, pushing her in anger was intended to cause her harm.

24. The extreme anger was not worth the trouble. The Accused person had anger management issues that would be best toned down through rehabilitation in prison. The fact that he used a piece of wood with nails on it, he refused to heed to the deceased's pleas to stop beating her, he refused to open the door when he was asked to do so by his mother and sister-in-law, the fact that he later opened the door and said that he had finished (Nimemaliza) and walked away was proof that he had intention of killing the deceased and it was not accidental. He was also holding a panga when he chased away his sister-in-law. Although, his family vouched for him, this court did not consider a non-custodial sentence to have been appropriate in the circumstances of this case.

25. 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 fifteen (15) 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.

26. 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).

27. 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).

28. 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...”**

29. 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.**

30. The Accused person was first arraigned in court on 15<sup>th</sup> July 2019. Although granted bond, he did not seem to have posted the same. He was convicted on 5<sup>th</sup> November 2025. The period he spent in remand, therefore, ought to be taken into consideration while computing his sentence.

**DISPOSITION**

31. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to fifteen (15) years imprisonment to run from the date of this Sentence.

32. For the avoidance of doubt, the period between 15<sup>th</sup> July 2019 and 9<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).

33. It is so ordered.

**DATED** and **DELIVERED** at **VIHIGA** this **10<sup>th</sup>** day of **February** 2026

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