

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**CRIMINAL CASE NO. E142 OF 2021**

**REPUBLIC** .....

**PROSECUTOR**

**VERSUS**

**PROTUS LUSENO MAPESA** .....  
**ACCUSED**

**RULING ON SENTENCE**

1. The Accused was convicted of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.
2. In mitigation, the Accused expressed remorse and sought for leniency. His Counsel submitted that the destruction of his entire property by the community after the offence was enough punishment for the Accused who is 56 years old with only a few years of active life left. He urged the court to grant him a non-custodial sentence and said that his family land was undergoing succession and his presence was necessary. He expressed willingness to reconcile with the family of the deceased.
3. The prosecution submitted that the Accused was a first offender but was found guilty of serious offence and aligned themselves with the probation report.

4. The deceased's uncle Adrian Mapesa said that the Accused was a bothersome person and they were not ready to reconcile with him. The deceased's brother Richard Mapesa Okutoyi said that the death of his brother had resulted in damage to his family as his children could not go to school and were living in penury since the deceased was the sole breadwinner of the family.
5. The pre-sentence report confirmed that the Accused is remorseful for the offence which resulted from a physical confrontation with the deceased. It depicts the Accused as a responsible, stable person whose wish is for reconciliation in their polygamous family as he believes that the underlying tensions and misunderstandings over land were the root cause of the unfortunate incident.
6. According to the pre-sentence report, the deceased's immediate family suffered deep emotional pain and financial loss after the death of their sole breadwinner and as a consequence, his seven (7) children have not been able to go to school as meeting even basic needs like food and clothing is a daily struggle.
7. The community on the other hand, perceives the incident as accidental as the Accused was a peaceful, law-abiding resident of the area. They view the 20-year land dispute in the family as the main factor in the offence.
8. The maximum penalty for the offence of manslaughter is life imprisonment. The maximum punishment is however reserved for the most aggravating of cases.

9. The pre-sentence report is positive and recommends a non-custodial sentence for the Accused with an order directing him to relocate from his rural home.
10. It is well settled that sentencing remains the discretion of the trial court. In determining the appropriate punishment, the court needs to consider the Judiciary Sentencing Policy Guidelines (2023) which sets out the objectives of sentencing as retribution, deterrence, rehabilitation, restoration, denunciation, reconciliation and reintegration.
11. Other factors that guide the court in meting out its sentences were outlined in the **Francis Karioko Muruatetu & Another v. Republic [2021] KESC 31 (KLR)** "*Muruatetu Case*" which laid down the guidelines to be followed when the court is considering a re-sentencing. The Supreme Court in that case held the following factors to be applicable:-
  - i. Age of the offender;**
  - ii. Being a first offender;**
  - iii. Whether the offender pleaded guilty;**
  - iv. Character and record of the offender;**
  - v. Commission of the offence in response to gender-based violence;**
  - vi. The manner in which the offence was committed on the victim;**

- vii. The physical and psychological effect of the offence on the victim's family;**
- viii. Remorsefulness of the offender;**
- ix. The possibility of reform and social re-adaptation of the offender; and,**
- x. Any other factor that the court considered relevant."**

12. In the present circumstances, the fact that there was an ongoing land dispute and the fact that the Accused used a metal rod to hit the deceased, who was unarmed on a vulnerable part of the body are aggravating factors. The Accused, and indeed, other members of the public need to appreciate that violence should not be used to resolve any dispute no matter how serious or how deep-seated. In my view, the Accused would have avoided the incident if he had reported the deceased's misdeeds, if any, to the relevant authorities. Despite the recommendation by the Probation office, the circumstances of the offence do not merit a non-custodial sentence. It calls for a non-custodial sentence as a deterrent measure and in order to achieve the objective of denunciation. Additionally, the victim's family need to have a sense of justice as they have suffered immensely from the offence.
13. Taking into account the entire circumstances of the case, the sentencing objectives, and the Accused's age and personal circumstances, I find a custodial sentence of seven (7) years most appropriate.

14. Pursuant to Section 333 (2) of the Criminal Procedure Code, the court must factor in the period the Accused spent in custody during the pendency of the case. The Accused was first arrested and placed in custody on 27<sup>th</sup> October 2021. He was released on bond on 16<sup>th</sup> November 2021. Upon conviction, he was committed to custody on 29<sup>th</sup> July 2025 and has been in custody to date. Those dates must be taken into account when computing his final sentence which is seven (7) years imprisonment. The Accused shall have fourteen (14) days right of appeal.

Dated, signed, and delivered at Kakamega, this 3<sup>rd</sup> day of March 2026.

**A. C. BETT  
JUDGE**

**In the presence of:**

Ms. Chala for the Prosecution/State

Mr. Isiakho holding brief for Manyoni for the Accused

Court Assistant: Polycap