



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Buyuka (Criminal Case E004 of 2025)  
[2026] KEHC 2577 (KLR) (24 February 2026) (Sentence)**

Neutral citation: [2026] KEHC 2577 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE E004 OF 2025  
JN KAMAU, J  
FEBRUARY 24, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**DISHON OMUKUTI BUYUKA ..... 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 12<sup>th</sup> December 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 evening of 13<sup>th</sup> June 2025, Benson Obuyaka Nondi (hereinafter referred to as “the deceased”) left home for Mwicho Market where he was a watchman at one of the shops. On his way home at about 0500 hours, he stopped at the farm of Susan Buyuka and picked a fencing pole. The Accused person herein, who was the caretaker at the farm noticed and raised an alarm. Members of the public, who included his children responded and arrested the deceased.
3. The Accused person and his children took the deceased to the Assistant Chief’s homestead while assaulting him with walking sticks. The Assistant Chief advised them to take him to Mwichio Police Station. Instead, they took him back to Susan Buyuka’s home. She heard the commotion outside her house and came out to check what was happening. She then saw a crowd of people with an old man seated on the ground and the Accused person who was her employee was armed with a walking stick.
4. The Accused person informed her that they had arrested the deceased for stealing a fencing pole from her farm. The deceased apologised to her and she took the fencing pole. She called the Village Elder and advised the Accused person to take the deceased to Mwichio Police Post.



5. One Stephen Bwabi rushed to the home of Abraham Okachia Mia, brother to the deceased, and informed him of what had transpired. The said Abraham Okachia Mia rushed to the scene and found the deceased lying down surrounded by a group of people. He saw the Accused person and his three (3) sons, Joel, Kulundu and Obama who were all armed with walking sticks.
6. The deceased informed him that he was assaulted by the Accused person and his sons. He took the deceased who was in severe pain to his home and bathed him in preparation to take him to hospital. He noticed that the deceased's chest was swollen and he had bruises in his shoulders. Suddenly, the deceased became unresponsive. They took his body to Puche Funeral Home and made a report at Mwichio Police Post. Investigations commenced and police officers visited his home and the scene of assault.
7. A postmortem examination on the body of the deceased was carried out on 24<sup>th</sup> June 2025. The Pathologist formed the opinion that the cause of the deceased's death was internal bleeding secondary to blunt force trauma following assault. The Postmortem Report dated 24<sup>th</sup> June 2025 was produced as Exhibit 1.
8. Having entered into a Plea Agreement, the Accused person proposed that he serves three (3) years' non-custodial sentence while the Prosecution recommended a sentence of fifteen (15) years imprisonment.
9. In his mitigation, the Accused person expressed remorse for having committed the offence. He said that he regretted and asked this court to consider that he was a first offender as he was once charged with a matter that was withdrawn. He pointed out that he was the sole breadwinner of his family that consisted of a wife and seven (7) children, three (3) of whom were in Form Three (3) and one was in Grade Five (5).
10. He averred that he and the deceased were friends as they belonged to the same Ministry in Church. He added that he used to abuse drugs but stopped after his son died and started serving as a Pastor in the PAG Church. He stated that he had had sufficient time to reflect on his actions as he did not intend that the deceased would die as he was just trying to stop the deceased from stealing from his employer.
11. He contended that although the Probation Report was negative, he was ready to relocate as culturally, he was not allowed to return to the community. He stated that he once used to live in Eldoret. He thus asked this court to mete upon him a non-custodial sentence.
12. On its part, the Prosecution asked this court to consider that the deceased was elderly and that the secondary victims were still bitter about the incident. It pointed out that although the Accused person had said that he regretted the incident, the Probation Report was negative. It urged this court to mete out on him a deterrent sentence that would deter other would-be offender from committing such an offence.
13. According to the Pre-Sentence Report of J. Sahani, Probation Officer, Vihiga County that was dated 7<sup>th</sup> January 2026 and filed on 9<sup>th</sup> January 2026, the Accused person was fifty-six (56) years old. He attended Essunza Primary School but dropped out while in class seven (7) due to lack of school fees. He resorted to casual labour to sustain himself. He moved to Nairobi where he secured employment as a salesman with Abey Kenya Ltd for eleven (11) years until its closure. He returned home and engaged in farming as his primary means of survival. He was married and had eight (8) children.
14. He was once charged with the offence of assault causing actual bodily harm and the matter was resolved out of court by a mutual agreement and reconciliation between parties. He had a history of drug and substance abuse. After the death of his child, he enrolled in a theological training program and thereafter served as a Pastor for nine (9) years. At the time of his arrest he was a caretaker in a farm which was the scene of the crime herein.



15. He was still in shock of what happened. He claimed not to have intended to commit the offence as the deceased was his best friend and neighbour. He viewed the incident as an accident and prayed for a non-custodial sentence.
16. The deceased's family expressed deep bitterness and emotional distress over his death. They pointed out that the deceased was not only a father but a guardian to his grandchildren and further managed the household affairs. They cited the close proximity of their residences and the fact that it had been barely four (4) months since they buried their loved one. In the premises, they strongly objected to the Accused person's release on a non-custodial sentence.
17. The local administration and the community acknowledged the Accused person's prior good conduct but recognised the risk of unrest should he remain in close proximity to the deceased's family given the cultural tensions and raw emotions that still persisted. They urged the court to grant him a custodial sentence to enable the deceased's family to heal.
18. The Probation Office opined that a custodial sentence was the most appropriate for the Accused person's rehabilitation and to uphold justice, affirm sanctity of life and safeguard community harmony while allowing the Accused person to reflect on his actions in a structured environment.
19. Notably, sentencing was 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 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 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.
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 the 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 clear from the facts of the case and the Pre-Sentence Report that the Accused person together with his sons assaulted the deceased which led to his death on allegations of stealing wooden posts from the farm that the Accused person was guarding. Even after he was advised by the Assistant Chief and the said Susan Buyuka to take the deceased to the Police Station, he still returned him to the farm and continued assaulting him with walking sticks. The deceased died shortly after he was rescued by his brother.
24. The Accused person used excessive force to discipline the deceased who was an old man. A non-custodial sentence was, therefore, not a prudent recommendation 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 ten (10) 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 30<sup>th</sup> June 2025. He was released on bond on 28<sup>th</sup> July 2025. He was convicted on 2<sup>nd</sup> December 2025 and remanded again. 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 ten (10) years imprisonment to run from the date of this Sentence.
32. For the avoidance of doubt, the periods between 30<sup>th</sup> June 2025 and 27<sup>th</sup> July 2025 and between 2<sup>nd</sup> December 2025 and 23<sup>rd</sup> February 2026 be and are 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 24<sup>TH</sup> DAY OF FEBRUARY 2026**

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

