



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRC/E012/2022

THE REPUBLIC VS ISAIYA NYATINDO

RULING

1. The accused was charged with the offence of murder contrary to section 203 read with section 204 of the Penal Code. This Court, however, found that the requisite element of malice aforethought was not established and convicted the accused of the lesser offence of manslaughter under section 202 of the Penal Code.
2. In mitigation, the offender stated that he wished to see his children, who are presently attending school. He further indicated that he is the primary carer for his elderly parents and could discharge those obligations only if sentenced to a noncustodial disposition. Ms Habiba, counsel for the offender, submitted that he is a first offender and the family's breadwinner, without specifying for whom. She reminded the Court that the accused was a victim of circumstances, lacked malice, and requested that the period already spent in custody be taken into account.
3. Mr Sirima, State counsel, contended strongly that a life had been lost and that a noncustodial sentence was therefore inappropriate. He further submitted that the victim's family had not forgiven the offender and were seeking severe punishment, contrary to any suggestion that the families of the victim and the offender had reconciled. He emphasised that the deceased was a young man who had not yet



commenced a family.



4. The punishment for manslaughter under the Penal Code is provided by section 205, which prescribes a maximum penalty of life imprisonment. Under the GATS 2023, the sentence for manslaughter depends on the degree of the offender's culpability. The Court is invited to consider the factors set out for assessing culpability in paragraph 5.2.7 and is encouraged, at times, to adopt a nuanced approach rather than a simplistic, binary one.
5. The evidence establishes that the deceased provoked the offender. It is clear that the deceased confronted the offender at his place of work while intoxicated and, notwithstanding PW1's attempt to prevent their fist fight, returned later intent on further confrontation. PW1's evidence indicates that the offender had used a sledgehammer to crack a nut, entered his kiosk and returned with a large piece of wood; however, PW1 did not directly observe the act of violence, as by the time he reached the scene the deceased was already lying on the ground. At the defence hearing the offender claimed that the deceased fell while attempting to demolish the kiosk, but in the PreSentence Report (PSR) dated 17 February 2026 he expressed remorse and accepted responsibility.
6. The PSR confirms that the offender is a first offender with no criminal record and that the community has no objections to him; it is their view that he can be rehabilitated. The victim's family oppose any form of reconciliation and maintain that the victim merits justice; they are also distraught that the victim died young and without a family. In **State of Madhya Pradesh v Mehtaab, Criminal Appeal No. 290 of 2015**, the Supreme Court of India observed: "It is the duty of the court to award just sentence to a convict against whom charge is proved. While every mitigating or aggravating circumstance may be given due weight, mechanical reduction of sentence to the period already undergone cannot be appreciated. Sentence has to be fair not only to the accused but also to the victim and society. It is also the duty of the court to duly consider the aspect of rehabilitating the victim."
7. Further, in **Republic v Namayan Alias Etiir [2024] KEHC 5108** (KLR) the Court held, inter alia: "The trend has been that when the accused person uses a dangerous weapon in committing the crime, the court is likely to sentence the accused to life imprisonment.
8. The right to be treated equally before the law as demanded in Article 27 of the Constitution requires that factors irrelevant to the determination of a sentence be excluded from consideration. Some of these factors are as defined in subsection (4) and include that no person should be sentenced more severely on account of their race, national or ethnic origin, colour, gender, sexual orientation, religion, age, mental or



physical disability, or similar factors. Sentencing is one of the most complex and contentious functions of a trial court at the end of the trial upon conviction of an offender or on admission of a plea of guilty to the charge. In general terms, the proper extent of sentencing discretion, such as the one I am about to exercise against the accused convict, is clearly



articulated in **R v Arcand (2010) A.J. No. 1383**. It is notorious among judges that one of the most controversial subjects both in theory and in practical application is sentencing. The proposition that if judges knew the facts of a given case, they would all agree, or substantially agree on the result, is simply not so... Without reasonable uniformity of approach to sentencing among trial and appellate judges many of the sentencing objectives and principles prescribed in the Code are not attainable. This makes the search for just sanctions at best a lottery and at worst a myth. Pretending otherwise obscures the need for the courts to minimise unjustified disparity in sentencing while maintaining flexibility.”

9. This Court has found that the offender was provoked by the victim, which induced a state of passion. As H. Gross observes in *A Theory of Criminal Justice* (New York: Oxford University Press, 1979) at 69: “In those cases where reason succumbs to passion, the will is determined by something external to it – a relation which Kant terms the heteronomy of the will. In such cases the person’s reasons for acting in a certain way pertain only to what he/she desires, independently of his moral beliefs. On the other hand, when the person’s will is determined by reason, the will is said to be selfruled; for reason is viewed as something internal to the will. A will that is determined by reason is at one with itself. According to Kant such a will can override passion and desire.”
10. In **Mgige v Republic [2026] KEHC 1322 (KLR)** the Court compared sentencing trends in cases such as *Republic v Joseph Otieno*; *Republic v Daniel Kiplangat Cheruiyot*; and *Republic v Joseph Olale*, and held that terms of five to seven years are common where there is provocation and excessive selfdefence. In the present matter, the plea of selfdefence was rejected and the Court places reliance on Kant’s analysis of passion.
11. Conversely, in **Republic v Juliana Wanza Mulei [2020] KEHC 9112 (KLR)** the Court, observing that the GATS is silent on sentencing for manslaughter, cited *V M K v Republic [2015] eKLR* and held that the offence of manslaughter ordinarily attracts a sentence of ten years. The Court further held that where a deadly weapon is used, courts are inclined to impose a life sentence.
12. Having considered the circumstances of this offence, and the authorities above, and noting that the deceased repeatedly provoked the accused even after being escorted away by the witness, the Court finds it appropriate that the offender be sentenced to **eight (8) years’ imprisonment**. In consideration of the four years already spent in custody, The time will run from when he was first arraigned in court



13. It is so ordered.

Dated, signed and delivered in Open Court/online through MS TEAMS, this ...
5th..... day ofMarch... 2026.



HON. LADY JUSTICE W. K.

MICHENI JUDGE

In the presence of : the accused person and

his advocate Mr. Sirima : For the State

Bebora : Court Assistant

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2026-03-08 22:11:08

