

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
(CORAM: R. MWONGO, J.)
CRIMINAL CASE NO. E029 OF 2024

REPUBLIC.....PROSECUTION

VERSUS

LEVIS KINYUA NJERU.....ACCUSED

JUDGMENT ON SENTENCING

The Charge

1. The accused was charged with murder contrary to Section 203 as read together with Section 204 of the Penal Code. The particulars of the offence are that on 28th September 2024 at London Bar and Restaurant in Kawanjara village, Embu East sub-county in Embu County, the accused murdered Ian Fundi.
2. The accused pleaded not guilty and the plea was duly entered.

Plea-Bargaining Agreement (PBA)

3. At the point of pretrial, the parties entered into a PBA dated 24th February 2025 signed by the accused, his advocate and the prosecuting counsel. The accused pleaded guilty to the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code. The PBA was availed in court together with court's Compliance Form for recording the plea agreement and the deceased's post-mortem report dated 03rd October 2024.
4. The court was satisfied that the accused person understood his rights under section 137F of the Criminal Procedure Code as signified by his signing the Court Form. Consequently, the PBA was adopted as part of the court record.
5. Accordingly, the accused person was convicted for the offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. Under Section 205 of the Penal Code, the punishment for Manslaughter imprisonment for life.

Mitigation

6. In mitigation, the accused stated that he is a first offender who has continued exhibiting good character since he was first placed in remand. That he has acquired useful skills while in prison, which skills he intends to use to become a better member of society. He prayed for a lenient sentence of 2 years imprisonment.

Response to Mitigation

7. In response to mitigation, the prosecution urged the court to consider the circumstances under which the deceased died and the impact of his death on his family. It opposed the proposed 2-year imprisonment sentence and urged the court to exercise its discretion in sentencing, keeping in mind these factors. It also acknowledged that the accused was a first offender.

The Probation Officer's Pre-Sentence Report (POR)

8. According to the probation officer's report dated 16th April 2025, the accused comes from a law-abiding family which offered to support his rehabilitation. They prayed that he be handed a non-custodial sentence. The family of the deceased is still saddened by the loss of the deceased since they shared a strong bond with him. They were of the opinion that the court should hand the accused a sentence commensurate with the offence committed and, possibly, award them compensation for the loss of their kin. The community and local administration confirmed that the accused was not involved in criminal activities and they hoped that the court would sentence him appropriately. The Probation Officer recommended Alternative Justice System (AJS) in sentencing to ensure that the outcome is a win-win for both the family of the accused and the deceased.

9. The court allowed the families of the accused and the deceased in the presence of the prosecution and defense counsel time to caucus on an appropriate form of punishment/recompensation for the offence under AJS. However, the effort failed and the process was abandoned.

The Agreed Facts

10. The agreed facts of the case are as follows:

- 1) On the 28th September, 2024 at London Bar and Restaurant in Kwanjara Village, Embu East Sub County within Embu County, at about 2 am the accused person was with the deceased who was his friend, and they were taking alcohol.
- 2) The deceased then began abusing the accused person stating that he was uncircumcised, A quarrel ensued between them, which degenerated into a fight. The accused then picked up a pool cue stick, and used it to assault the deceased on the head once. The deceased became unconscious fell down and was rushed to hospital by the accused person and others. However, he was pronounced dead on arrival at the hospital.

- 3) The accused immediately reported the matter to the police who then arrested him. The police visited the scene and removed the deceased's body to Tenri Hospital mortuary, where the post-mortem was conducted on 3rd October, 2024 by Dr. Nicholas Nkonge who formed the opinion that the cause of death was due to severe head injury due to blunt force trauma.
- 4) On 7th October, 2024 the accused person was examined by Dr. J.N. Thuo Consultant Psychiatrist at the said hospital, who found him mentally fit to stand trial.
- 5) The accused person was then charged with the offence of murder, which has now been reduced to manslaughter.

Analysis and Determination

11. The court in this matter is guided by the provisions of the Judiciary Sentencing Policy Guidelines 2023 as amended on direction of the Supreme Court in the case of **Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR)**.
12. Under section 205 of the Penal Code, the accused is liable to face a punishment of life imprisonment. In April 2025, the Supreme Court held that the life imprisonment sentence is lawful and applicable. This was the finding in the cases of **Republic v Ayako (Petition E002 of 2024) [2025] KESC 20 (KLR) (Ayako case)** and **Republic v Manyeso (Petition E013 of 2024) [2025] KESC 16 (KLR) (Manyeso case)** where it was held that only Parliament has the power to revise a sentence prescribed under a statute.
13. Despite this, the court should exercise its discretion given the circumstances of the case. The prosecution has left the matter of sentencing to the court but it opposed the 2-year imprisonment sentence proposed by the accused. The family of the deceased feels that the court should give an appropriate sentence commensurate with the offence.
14. The accused and deceased were known friends and on the night of the incident, they were drinking together at a bar. The deceased insulted the accused, calling him uncircumcised and in a drunken stupor, the accused retaliated by hitting the deceased with a stick on his head. The deceased was taken to hospital but he was pronounced dead on arrival. The accused is a first offender and he has prayed for a lenient sentence.

Disposition

15. In my view, given the circumstances of the case, the appropriate sentence for the accused is a term of 6 years imprisonment followed by a community service order.
16. Accordingly, the accused is sentenced to six (6) years imprisonment, less any time spent in lawful custody. The last twelve (12) months of his sentence shall be a non-custodial sentence during which he will be engaged in Community Service under Supervision of the Probation Officer.
17. Orders accordingly.

Delivered, dated and signed at Embu High Court this 29th day of April, 2026.

**R. MWONGO
JUDGE**

Delivered in the presence of:

1. Accused Present in Open Court
2. Chepkorir for Accused
3. Ms. Mwaniki for the State
4. Francis Munyao - Court Assistant