

REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE NO E007 OF 2025

REPUBLIC

DPP

VERSUS

ELVIS ANDEGA MUNYASA.....

ACCUSED

Coram: Justice R. Nyakundi

Mr. Leina for State

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 27th April 2026 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 13th April 2025, the deceased Derrick Shavanga found his ballast missing at home. He asked his wife Naomi Akamala about it and he was informed that the Accused person herein, who was his son, had been seen loading it into a cart with his friends. The deceased moved out of the house where he went to confront his son over the same and was assaulted by the son on the head using a jembe. On 17th April 2025, the Accused person was arrested by the villagers and taken to Serem Police Station. He was to be charged with the offence of assault and being in possession of bhang.
3. On 21st April 2025, the health of the deceased worsened and he was taken to Vihiga County Referral Hospital where he was admitted in critical condition. Thereafter on 22nd April 2025, the Accused person

was arraigned at Hamisi Law Courts and charged with being in possession of bhang. He was remanded at Kodiaga GK Prison but incidentally on 23rd April 2025, the deceased succumbed to the injuries which were inflicted by his son while undergoing treatment in the hospital. The body was moved to the mortuary of the same facility awaiting autopsy. The post-mortem was done on 28th April 2025 at Vihiga County Referral Hospital morgue and the cause of death was established to be due to septic meningitis secondary to blunt force trauma following assault. The investigations were conducted and on completion a recommendation was made to the Director of Public Prosecution to have him charged with the offence of murder contrary to Section 203 of the Penal Code.

4. The Prosecution Counsel in this matter was Davis Leina whereas the defence was led by Learned Counsel M/S Lumallas. In the course of the pendency of the case on the charge of murder a motion was moved by the learned Counsel for the Accused to have it dealt with under the plea bargaining protocols under Section 137A-O of the Criminal Procedure Code. The negotiations formed the basis upon which the offence of murder was reduced to that of manslaughter contrary to Section 202 as punishable under Section 205 of the Penal Code. The Accused subsequently pleaded guilty to the elements of manslaughter and therefore convicted of the offence with a residual duty of this Court to conduct the sentence hearing to arrive at an appropriate verdict.
5. In the first instance, Learned Counsel in her mitigation on behalf of the Accused person took the Court through various mitigation factors which should go a long way to persuade the Court to impose a fair and proportionate sentence. According to Legal Counsel M/S Lumallas she pleaded with the Court that the following key factors be taken into account to tilt the scale from the prescribed sentence of life imprisonment for the offence of manslaughter contrary to Section 202 of the Penal Code as punishable under Section 205 of the Penal Code to give him a benefit of a lesser punitive sentence. In this respect, Learned Counsel, in her Written Submissions urged the

Court to consider that the Accused person was a young man in his twenties (20s) from a humble and unstable family background. That he happened to be raised without proper parental love, guidance and discipline for they had separated at a tender age leaving him to fend for himself. It was also the contention of the Learned Counsel that the Accused person never managed to go to school and his survival rights came from occasional casual jobs within the community.

6. As to the circumstances of the offence, Learned Counsel urged the Court to consider that the young man regrets the offence, although the same involved his own biological father. That having been involved in representing the Accused person during the provision of legal services, the Learned Counsel came to appreciate that the offender was involved in substance abuse and in committing this offence there was no malice aforethought. In a nutshell, Learned Counsel highlighted the issue of the Accused person's courage to enter a plea of guilty, his genuine remorse and acceptance of responsibility, issues of age and difficulties in upbringing due to the dysfunctional family set up. Learned Counsel argued and agitated for a sentence to enable the offender go through rehabilitation and transformation as a young citizen of this country.
7. On the part of the Prosecution, the lead Counsel, Mr Leina invited the Court to factor in the seriousness of the offence and the manner in which it was committed by the Accused person, now a convict. That in the fairness of imposing a fair and appropriate sentence, the aggravating factors outweigh the mitigation offered by the Accused person and that that should not be wished away by the Court.
8. This Court further also takes cognizance that a Presentence Report dated 8th May 2025 was shared with the Court touching on family background, personal history, circumstances of the offence, the offender's attitude and the views of the community. What came out very strongly, the accused person as a young man, as always known by the community can be described as a truant or a delinquent in

his characterization as perceived by those he interacted with prior to the commission of this offence.

9. If the language of the community and the Assistant Chief is anything to go by and I quote, *“the offender used to smoking bangi, abusing alcohol and always armed”*. That in certain instances, explained the Assistant Chief that the Community was so much fed up of him because of his truancy nature of life and they wanted to lynch him so that he can be eliminated from the Community but luck was on his side as the Police managed to rescue his life. In the recommendation of the Probation Officers, the offender is not suitable case for a non-custodial sentence. Given this background of evidential material it is now time for the Court to exercise judicial discretion within the scope of Section 205 of the Penal Code for the offence of manslaughter which now stands at life imprisonment.

Decision

10. The foundational dicta in sentencing the offences of homicide in Kenya as defined in Sections 202 and 203 of the Penal Code is traceable to the Supreme Court guidelines in the case of **Francis Muruatetu vs Republic 2017 eKLR**. In so far as the mandatory death penalty is concerned, originally prescribed for the offence of murder contrary to Section 203 of the Penal Code by this decision it was rendered unconstitutional. The Court went on to reiterate the provisions of the law being Sections 216 and 329 of the Criminal Procedure Code which expressly provides as follows: Section 216 provides as follows: *That the Court may before passing sentence or making an order against an accused person under Section 215 receive such evidence as it thinks fit in order to inform itself as to the sentence or order to be passed or made.* Whereas under Section 329 the Code provides that; *The Court may before passing sentence receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed.* It is in the very same decision that the following guidelines were issued by the Court as applicable during the sentence hearing for the serious offences like murder and manslaughter.

- (a) *The age of the offender*
- (b) *Being a first offender*
- (c) *Whether the offender pleaded guilty*
- (d) *Character and record of the offender*
- (e) *Commission of the offence in response to gender-based violence*
- (f) *Remorsefulness of the offender*
- (g) *The possibility of reform and social re-adaptation of the offender*
- (h) *Any other factor that the Court considers relevant.*

11. Notably, sentencing is 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 is fairness, justice, proportionality and commitment to public safety. The main objectives of sentencing are retribution, incapacitation, deterrence, rehabilitation and reparation. The Sentencing Policy Guidelines in Kenya have added community protection and denunciation as sentencing objectives. The objectives are not mutually exclusive and can overlap.

12. The doctrine of proportionality in sentencing dictates that a sentence must fit the gravity of the crime matching punishment severity with the offender's culpability and harm caused ensuring fairness. This one case from the facts presented before this Court there was no evidence of self defence on the part of the accused under Section 17 or provocation under Sections 207 and 208 of the Penal Code to warrant use of excessive force by the accused person. The following cases articulate the legal dimension on self defence and provocation:

- ***BECKFORD v R***: *Established that if self-defence is raised, the prosecution must disprove it.*
- ***DPP v MORGAN [1975]***: *Influenced the requirement that self-defence is justified if the accused reasonably believed they were in imminent danger.*
- ***R v Robinson, Beresford & Dunkley (Jamaica)***: *Explores scenarios where provocation is raised as a defence strategy.*

- ***R v Miller, Morris (Jamaica)***: Highlights the necessity of proper jury instructions on provocation to reduce murder to manslaughter.
- ***Petition No. E032 of 2023 (Kenya)***: Discusses the application of self-defence in the context of battered woman syndrome, focusing on reasonable perception of danger.

13. The principles in the above cases revolve around whether the force used was proportional to the threat and whether the accused acted in the heat of passion without time to cool down. This defences in law and in normal circumstances act to negate the existence of malice aforethought. Unfortunately, from the facts of this case there is no evidence that the physical confrontation by the accused while armed with a dangerous weapon namely a jembe were triggered by his father with any object which could have made him to retaliate to save his life. This was a deliberate and evil conduct by the accused designed to end his father's life. Although essentially the offence the Court is dealing with is that of manslaughter, there are no facts apart from a plea of guilty that are capable of excluding existence of malice aforethought. There was a pre-formulated intent to kill his father when he might have posed the question why he was loading away his sand without having sought his consent. The accused person was first committing a crime of theft against his own father and by maybe being admonished he armed himself with a dangerous weapon which inflicted fatal injuries. This was in violation of Article 26 of the Constitution on the right to life. This loss of life of his biological father could have been saved if it was not for the accused's depraved heart.

14. 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.

15. 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.

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

17. It was clear from the facts of the case and the Pre-Sentence Report that the Accused person killed the deceased. The deceased who was his biological father. Although the deceased asked him by inquiring about his ballast, he ought not to have hit him on the head with a jembe. This was not to restrain him from beating him. It was intended to cause him harm. The extreme anger was not worth the trouble. The Court was able to examine the mitigation offered by the Accused person. There are no compelling and exceptional circumstances to warrant a non-custodial sentence and further there are no acts done by the accused person to demonstrate sincerity and remorse which are necessary to a full apology for serious wrongs of this nature.

18. 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 is the sole discretion of the Court, this Court comes to the firm conclusion that a sentence of life imprisonment is fair and proportionate for the offence as prescribed by Parliament. It is so ordered. 14 days for appeal.

**DATED AND DELIVERED AT VIHIGA THIS 12TH DAY OF MAY
2026.**

.....
R. NYAKUNDI
JUDGE

In the presence of:

Mr. Leina for State

The Accused

M/s Lumullas for the Accused.