



**Director of Public Prosecution v Wekesa (Criminal Case  
E050 of 2024) [2025] KEHC 492 (KLR) (27 January 2025) (Sentence)**

Neutral citation: [2025] KEHC 492 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE E050 OF 2024  
S MBUNGI, J  
JANUARY 27, 2025**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTION ..... REPUBLIC**

**AND**

**JULIUS JUMA WEKESA ..... ACCUSED**

**SENTENCE**

1. Julius Juma Wekesa had been charged with an offence of murder contrary to section 203 and 204 of the Penal Code, but the charge was eventually reduced to manslaughter following a plea bargain agreement. The court entered a plea of guilty to the said charge of manslaughter on the accused's own plea of guilty to said charge after the court accepted the plea agreement pursuant to section 137H of the Criminal Procedure Code. This was after the court was satisfied of the factual basis of the plea agreement and that the accused was competent, of sound mind, and had acted voluntarily in accordance with section 137G of the Criminal Procedure Code at the time of the agreement.
2. In terms of section 202 as read with section 205 of the Penal Code the accused, upon being convicted, is subject to serve life imprisonment.
3. Ms. Osoro represents the prosecution, while Ms. Mburu represents the accused.
4. The facts of the case were that the accused assaulted one Robert Wekesa on 04.05.2024, his father by hitting him. He stabbed him to the chest with a knife. The deceased, in fear of the accused person, went away to stay with his in laws after treatment. On 11.07.2024 the deceased was found dead where he was sleeping in the sitting room. The postmortem showed that the cause of death was anemia due to excessive bleeding after he was assaulted and suffered from blunt traumatic injury on the left posterior side of the chest.



5. The Supreme Court in Francis Karioko Muruatetu & Another vs Republic, Petition No. 15 of 2015, as a guide in sentencing held that:

“...the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- a. 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.”

6. In Dahir Hussein v. Republic Criminal Appeal No. 1 of 2015; [2015] eKLR, the High Court held that the objectives of sentencing include: “deterrence, rehabilitation, accountability for one’s actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim.”

7. The 2016 Judiciary of Kenya Sentencing Policy Guidelines lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

“Sentences are imposed to meet the following objectives:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.
5. Community protection: To protect the community by incapacitating the offender.
6. Denunciation: To communicate the community’s condemnation of the criminal conduct.”

8. The discretion in sentencing rests with the trial judge because he or she has the knowledge of the relevant facts before him or her and in many instances, has observed the accused and witnesses’



demeanor. The discretion must however be exercised judiciously. In the Nigerian case of African Continents Bank vs Nuamani [1991] NWLI (part 86) 486, it was observed that,

“The exercise of court’s discretion is said to be judicial if the judge invokes the power in his capacity as a judge qua law. An exercise of discretionary power will be said to be judicial, if the power is exercised in accordance with the enabling statutes, discretionary power is said to be judicious if it arises or conveys the intellectual wisdom or prudent intellectual capacity of the judge. The exercise must be based on a sound and sensible judgment with a view to doing justice to the parties.”

9. I heard the mitigation. Ms. Mburu prayed for a sentence more lenient than the 10 years suggested by the prosecution, since the accused had pleaded guilty from the beginning. She also stated that the accused was a young man aged 34 years old, and would live with the guilt all his life.
10. Ms. Osoro in her sentencing submissions opposed a non-custodial sentence. She stated that the accused was temperamental in nature, a fact that made the deceased who was 69 years old, not to go back to his home since he feared that the accused might attack him again. She further told the court that the accused needed to be in custody for a longer period of time so that he can seek peace and forgiveness.
11. On record is a pre-sentence report dated 23.01.2025 that indicates that the convict has four children. It also states that he is violent, abuses alcohol, bhanga and keeps the company of negative associates. It also states that the accused is remorseful and pleads for leniency since it was not his intention to kill his father. The community however, states that the accused had previously been linked to a number of antisocial incidents including threats and actual use of violence within and outside the family.
12. Under section 205 of the Penal Code, manslaughter is punishable by a maximum sentence of life in prison. This is, however, the maximum penalty that is normally reserved for the most serious of such situations. This does not, in my opinion, fall into the category of the most heinous examples of manslaughter. As a result, I’ve ruled out life imprisonment.
13. I have taken into account the fact that the convict readily pleaded guilty from the beginning, as one of the factors mitigating his sentence.
14. I have considered the fact that the convict is a first offender, a relatively young man at the age of 34 years when he committed the offence. It is said that the accused has some anger related issues and which requires that he serves a custodial sentence in order to undergo proper anger management before rejoining his family. In that regard I find a custodial sentence is an appropriate sentence. The ODPP suggested a term of ten (10) years. The accused is a first offender aged 34 years and he pleaded guilty, saving the court valuable judicial time.
15. In view of the foregoing, I hereby order the accused to serve a sentence of seven (7) years imprisonment.
16. The accused has been in custody since he was arrested. I hereby direct that the period spent in custody during the pendency of the trial be taken into account and be deducted from the term pursuant to the provisions of section 333(2) of the CPC.
17. The term shall commence from the date of arrest being 09. 10.2024.
18. Right of appeal 14 days explained.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 27<sup>TH</sup> DAY OF JANUARY, 2025.**

**S.N MBUNGI**



## **JUDGE**

In the presence of :

Accused person – present

MS. Mburu Advocate for the accused – present

Court Prosecutor – Sirtuy

Court Assistant – Elizabeth Angong'a

