



**Republic v Jahonga (Criminal Case E017 of 2024)
[2025] KEHC 1082 (KLR) (28 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 1082 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E017 OF 2024
JN KAMAU, J
FEBRUARY 28, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

BRIAN LIVAHA JAHONGA 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 19th February 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 15th October 2024, Celestine Jelangat (hereinafter referred to as the “deceased”) was with her husband, the Accused person herein at their home preparing supper when he left the house to get some milk from a neighbour. When he returned, he found the deceased communicating on phone through chats. She picked her jacket and walked out of the house. She did not return that night. He went to the neighbor’s home to inquire about her whereabouts but he did not find her there. He went back home and slept.
3. The following day on 16th October 2024, he went for his usual duties. He found the deceased when he returned home in the evening. When he asked her where she slept the previous night, she did not give a satisfactory answer. This caused him to be overwhelmed with anger whereupon he assaulted her with kick and blows. Their children who were asleep were awoken by the commotion. They went to their grandparents’ house and slept there.
4. On 17th October 2024, the Accused person realised that the deceased was in pain and he took her to Koibarak Medical Clinic. She was treated and discharged. The following day on 18th October 2024, her health deteriorated and they went back to the same Clinic. She fainted on arrival. The Clinician



revived her and advised the Accused person to take her to a more established hospital. He, however, took her back home.

5. The deceased died on the night of 18th October 2024. He informed his parents of the incident in the morning of 19th October 2024 and they in turn informed the Area Assistant Chief. Police Officers from DCI, Hamisi were also informed of the incident and they visited the scene. They arrested the Accused person and removed the deceased's body to Vihiga County Referral Hospital Morgue.
6. A post mortem examination on the body of the deceased was carried out on 1st November 2024. The Pathologist formed the opinion that the cause of the deceased's death was circulatory collapse secondary to extensive soft tissue injuries following assault.
7. After the investigations were concluded, the Accused person was charged with the offence of murder. The Postmortem Report dated 1st November 2024 was produced as Exhibit 1.
8. Having entered into a Plea Agreement, the Accused person urged this court to sentence him to seven (7) years. On its part, the State recommended a sentence of fifteen (15) years imprisonment.
9. In his mitigation, the Accused person pointed out that he was a first offender and that he was remorseful as the incident affected him as he loved his wife. He stated that he did not anticipate the events as they turned out. He informed the court that he had two (2) minors who majorly depended on him. He said that he was ready for rehabilitation to curb his anger.
10. He further submitted that he was from a poor background and was the sole breadwinner of his family. He pointed out that he survived by doing manual jobs. Although he asserted that his culture would not allow him to go back home, he prayed for leniency and a non-custodial sentence. He sought for an opportunity to start his life afresh.
11. On its part, the Prosecution submitted that it had noted that the Pre-sentence Report was negative as the Accused person had a history of violence with his family members, especially against his father. It pointed out that the deceased's family was still saddened by the incident more so because the children who now lacked motherly love.
12. It further submitted that the cultural practices dictated that the Accused person does not go back to his community. It added that he had abused drugs which had affected his character. It prayed for a custodial sentence to allow him to be rehabilitated and for it to be a deterrent to him and others who may commit a similar offence.
13. According to the Pre-Sentence Report of J. Sahani, Probation Officer, Vihiga County that was dated 17th February 2025 and filed on 18th February 2025, the Accused person was thirty-one (31) years old. He attended Kaptik Primary School. He, however, dropped out in Standard Seven (7) on his own volition due to difficulties in comprehension. Since he had no formal skill, he resorted to menial jobs within the locality including brick making, quarrying, boda boda and peasant farming.
14. Before he met the deceased, he had been previously been married in a union that was blessed with two (2) children. It was reported that his first marriage was marred with violence on claims of the wife's infidelity which led them to part ways. He met the deceased in 2022 and they decided to stay together as a couple. The deceased moved in with her daughter. He was reported to the Village Elder for assaulting the deceased on several occasions. At the time of the death of the deceased, they had not been blessed with a child. He was a consumer of local brew and would smoke bhang.
15. He regretted having committed the offence, acknowledging that he was driven by anger. He pointed out that the deceased did not deserve to die and it was not his intention to kill her. He sought for



leniency of the court and sought forgiveness from her family and the community. He asserted that for the period he had been in prison, he had learned valuable lessons particularly about resolving conflicts constructively. He sought for a non-custodial sentence to enable him attend to his children.

16. His family was apprehensive of re-uniting with him for fear of being banished by the community. His father expressed his reluctance to trust him with family assets. They had decided that he should not return home or community and instead his portion of land would be sold and he be settled elsewhere far away.
17. The secondary victims reported that although the deceased was a child born out of wedlock, she was loved and her death was saddening. They pointed out that her death had denied her children the motherly love and basic responsibilities. They believed that custodial sentence would be the best option for the Accused person.
18. The Local Administration and the community reported that the Accused person became stubborn when he started abusing drugs and was always with conflict with his father, step-mother and the deceased. They recommended that he be given a custodial sentence and later be settled elsewhere far away from the community.
19. The Probation Office did not find the Accused person to have met the threshold to be considered for community rehabilitation. It recommended that a jail term be meted upon him.
20. 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.
21. 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.
22. 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.
23. 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.
24. It was clear from the facts of the case and the Pre-Sentence Report that he killed the deceased. The deceased who was his wife. The jealousy that he expressed was not worth the trouble. He was a habitual wife beater and was violent to both his first and the deceased. Such gender based violence must be abhorred and deterred. Indeed, there had been an increase in femicide incidents which therefore called for a stiff sentence.
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 fifteen (15) 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, the *Judiciary Sentencing Policy Guidelines* provide that:-
- “The proviso to section 333 (2) of the *Criminal Procedure Code* obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”
29. The requirement under Section 333(2) of the *Criminal Procedure Code* was restated by the Court of Appeal in *Ahamad Abolfatbi Mohammed & another v Republic* [2018] eKLR.
30. The Accused person was arrested on 19th October 2024. He was convicted 19th February 2025. This was a period that 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 fifteen (15) years imprisonment to run from the date of this Sentence.
32. For the avoidance of doubt, the period between when he was arrested on 19th October 2024 and 27th February 2025 before he was sentenced be and is 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 28TH DAY OF FEBRUARY 2025

J. KAMAU

JUDGE

