



**Republic v Amboko (Criminal Case 36 of 2021)
[2025] KEHC 1242 (KLR) (27 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 1242 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 36 OF 2021
JN KAMAU, J
FEBRUARY 27, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

PAUL OTEMO AMBOKO ACCUSED

SENTENCE

1. On 26th November 2024, this court convicted the Accused person herein for the offence of the murder of Richard Osilu Nyandoya contrary to Section 203 as read with Section 204 of the [Penal Code](#) thereof under Section 215 of the [Criminal Procedure Code](#) Cap 75 (Laws of Kenya).
2. In his mitigation, he expressed remorse and regretted having committed the offence. He stated that he committed the offence out of provocation since there were love issues that were involved. He explained that he was intoxicated at the time and was not fully reasonable.
3. He pointed out that he had never committed any other offence and prayed that he be treated as a first offender. He averred that he had been in custody since his arrest on 23rd March 2021 which period had changed his life. He averred that although the Pre-Sentence Report had recommended a custodial sentence, he prayed for leniency and he be granted a non-custodial sentence. He said that he was young man aged forty-nine (49) years which meant that he was still productive in the society. He prayed that he be accorded another opportunity to be in the community. He also sought for forgiveness from the deceased's family
4. On its part, the Prosecution stated the Pre-Sentence Report was negative as the Probation officer had opined that the Accused person was not fit for community rehabilitation as the local administration was apprehensive of his safety due to the gravity of the offence that he committed.



5. It added that the secondary victims were still bitter about the incident as the deceased's children were now orphaned as their mother had died earlier. It said that the children were now under the care of their grandfather whose health had deteriorated as a result of this incident.
6. It asked this court to consider the serious injuries that the deceased sustained. It contended that the fracture of the occipital bone showed that the Accused person's intention was to eventually kill the deceased. It urged this court to mete upon the Accused person a custodial sentence to deter him for justice not only to be done but for it be seen to have been done.
7. According to the Pre-sentence Report of Mariam Korir, Probation Officer, Vihiga County dated 30th December 2024 and filed on 10th January 2025, the Accused person was forty-nine (49) years old. He studied at Epanga nursery school but did not proceed to primary school due to poverty. He stayed at home until the age of fifteen (15) years when he moved to Thika where his father was working in a coffee farm. He worked at the coffee farm for five (5) years. He returned home where he started a tree nursery and sold seedlings as his economic activity.
8. He was married and he and his wife were blessed with one (1) child who died. He was a Christian and had no healthy complications. He was an alcoholic and a first offender.
9. He did not accept or deny committing the offence. He asserted that he was not aware of what transpired since he was intoxicated with alcohol. He, however, sought for a lenient sentence.
10. His family believed that he did not intend to kill the deceased since they were friends. They blamed the offence on alcoholism on the part of both the Accused person and the deceased.
11. The deceased's family was resentful towards the Accused person's action that took away their kin. They explained that the deceased was the sole bread winner of his family after his wife died and that he left behind children some of whom dropped out of school after his demise. The deceased father reported that his son's death led to his stress and high blood pressure. They were opposed to the Accused person being accorded a lenient sentence. They prayed that the court punish him for the offence.
12. The Local Administration and the community opined that the Accused person lived well until he started abusing drugs which changed him from a polite character to that of an aggressive person. They explained that the offence brought havoc in the community and led to his house being demolished. They stated that although he was not a bad person and may have not intended to kill the deceased, they were opposed to him being accorded community rehabilitation due to the gravity of the offence.
13. The Probation Officer opined that the Accused person was not fit for community rehabilitation.
14. 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.
15. It was important that the sentence communicate to the community, condemnation of their 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.



16. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of the offence at the time of sentencing them, chances of the Accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
17. After serving a sentence, the offender could rejoin society as a reformed person capable of re-integration into the society. He would have learnt his lesson and others would have learnt through him.
18. Killing someone was an abomination in the society. That could explain why the victim's family and the Local Administration 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.
19. This court looked at the Post-mortem Report dated 26th March 2021 and noted that the deceased died as a result of a penetrating head injury due to sharp force trauma following assault.
20. Although the Accused person and his family pleaded for leniency, this court did not find it prudent to grant him a non-custodial sentence due to the nature of the offence. The nature of the injuries the deceased sustained showed the malice that the Accused person had and showed his intention of killing him.
21. This court rejected his version that he found the deceased in a bar and he tried to attack him first and that he did not know what happened to him after he grabbed the panga from him. The facts of the case showed that the Accused person attacked the deceased in their house after an altercation arose when he tried to touch Josephine Andeso (hereinafter referred to as "PW1").
22. It was evident that he did not appear to appreciate the gravity of his actions and therefore expressed no remorse. As he refused to admit what transpired on the material date, he was more likely to re-offend as he did not see any wrong in what had happened.
23. Having considered the facts of this case and the Accused person's mitigation and weighed against the death sentence that is prescribed for the offence of murder under Section 204 of the *Penal Code*, this court came to the firm conclusion that a non-custodial sentence would be unjust as a life was lost. Indeed, the Probation Office had found that the Accused person was unsuitable for a non-custodial sentence.
24. It was the considered view that as a life was lost and the Accused person proceeded with the full trial, a sentence of fifteen (15) years imprisonment would be suitable and adequate herein as the incident occurred when he was drunk.
25. Going further, this court was mandated to consider the period the Accused person 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).
26. 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).



27. 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.”

28. The requirement under Section 333(2) of the [Criminal Procedure Code](#) was restated by the Court of Appeal in [Abamad Abolfathi Mobammed & another v Republic](#) [2018] eKLR.

29. The Accused person was arrested on 23rd March 2021. Although he was granted bond, he did not seem to have posted the same. The time he remained in custody therefore ought to be taken into consideration while computing his sentence.

Disposition

30. Accordingly, having convicted the Accused person of the offence of murder contrary to Section 203 as read with 204 of the [Penal Code](#), he is hereby sentenced to fifteen (15) years imprisonment which will run from today.

31. For the avoidance of doubt, the period the Accused person spent in custody between 23rd March 2021 until 26th February 2025 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).

32. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 27TH DAY OF FEBRUARY 2025

J. KAMAU

JUDGE

