



**Republic v Laban alias Mili (Criminal Case 38 of 2021)
[2025] KEHC 1188 (KLR) (27 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 1188 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 38 OF 2021
JN KAMAU, J
FEBRUARY 27, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

MELIKIZEDEKI JIMWA LABAN ALIAS MILI ACCUSED

SENTENCE

1. The Judgment herein was delivered on 26th November 2024. The Accused person herein was found guilty of the offence of the murder of Jenifer Mbone contrary to Section 203 of the [Penal Code](#) as read with Section 204 thereof, and was convicted accordingly under Section 215 of the [Criminal Procedure Code](#) Cap 75 (Laws of Kenya).
2. In his mitigation, he asked for forgiveness from his family. He expressed remorse and regretted having committed the offence. He said that he had never been involved in criminal activities. He stated that he was a young man aged thirty-seven (37) years which meant that he was still a productive person to the society.
3. He averred that he was not married but was looking forward to starting a family. He contended that it was only fair that he be accorded an opportunity to go back to the society and start a family. He admitted to have been using drugs due to peer pressure which contributed to him having committed the offence herein as he was not in a proper state of mind.
4. He added that since he was arrested on 16th June 2019, he had been able to learn a lesson. He promised never to engage in any other offence. He stated that even though the Pre-Sentence Report had recommended a custodial sentence, he prayed for a non-custodial sentence so that he could go back to the community and start his life. He prayed for leniency in the event the court was inclined to give a custodial sentence.



5. On its part, the Prosecution stated that the Pre-Sentence Report was negative. It pointed out that the deceased was the biological mother to the Accused person and for which his father and siblings are still bitter with this incident. They did not want to be associated with him as their customs prohibited him from mingling with them as they considered him as an outcast. His father asks that he be jailed for life. It said that the local administration sought a custodial sentence for the safety of the community and the safety of the Accused person.
6. It therefore prayed for a custodial sentence because the Accused person killed his mother because of a disagreement. It was emphatic that he ought to have managed his anger. It recommended that the court mete upon him a custodial sentence that would help him to be rehabilitated before he was released back to the society.
7. According to the Pre-sentence Report dated and filed on 4th February 2025 by Mariam Korir, Probation Officer, Vihiga County, the Accused person was thirty-seven (37) years old. He studied at Gaumbwa Primary School and dropped out at class seven (7) due to negative peer influence and drug abuse.
8. He was single and had no dependents. He learned masonry through his father. He lived and worked in Kakamega, Mosoriot, Syokimau and Kinangop before returning home where he would demand money from his mother to buy bhang and alcohol. He had no health complications. His behavior was influenced by drug abuse and negative peer influence. He denied having committed the offence and did not show any sign of regret or remorse.
 1. His family was still mourning the loss of their mother and were still in disbelief that he cut short his biological mother's life. They were deeply hurt and did not want to associate with him. The family and the community urged this court to jail him for life for the cruelty that he committed against his mother. They pointed out that they and the community considered him an outcast and he would never be welcomed in the community again. The Local Administration and the community were apprehensive that he would be lynched if he was seen around.
 2. The Probation Officer opined that community-based rehabilitation was not tenable in this case. It left the court to determine the matter as deemed fit.
 3. 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.
 4. 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.
 5. 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.



6. 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.
7. Killing someone was an abomination in the society. Killing ones mother was unforgivable. This is a person who carried a child in her womb for nine (9) months, sucked and nurtured a child only for that child to turn against her. That could explain why the Accused person's family 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.
8. This court looked at the Post-mortem Report dated 12th June 2019 and noted that the cause of the deceased's death was epidural and subdural haematoma secondary to blunt and sharp force trauma due to assault. The nature of the injuries the deceased sustained showed the malice that he had and showed his intention of killing his mother.
9. 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 as he had sought would be unjust as a life was lost. Indeed, the Probation Office had found that he was unsuitable for a non-custodial sentence.
10. It was the considered view that as a life was lost and the Accused person proceeded with the full trial, a sentence of twenty-five (25) years imprisonment would be suitable and adequate herein as he did not kill his mother but she died later.
11. Going further, this court was mandated to consider the period that he spent in remand while their trial was on going in line with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).
12. 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).
21. 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.”
22. The requirement under Section 333(2) of the *Criminal Procedure Code* was restated by the Court of Appeal in *Abamad Abolfathi Mohammed & Another vs Republic* [2018] eKLR.



23. The Accused person was first arraigned in court on 24th June 2019. 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

24. 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 twenty- five (25) years imprisonment which will run from today.
25. It is hereby directed that the period the Accused person spent in custody between 24th June 2019 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).
26. It is so ordered.

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

J. KAMAU

JUDGE

