



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Alembi (Criminal Case 9 of 2022)  
[2025] KEHC 1190 (KLR) (26 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 1190 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE 9 OF 2022  
JN KAMAU, J  
FEBRUARY 26, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MUSA ALEMBI ..... 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). The matter had been previously handled by Amin J (as she then was). This court became seized of the same on 23<sup>rd</sup> March 2023 when the parties asked it to proceed from where it had reached.
2. It proceeded for hearing on 24<sup>th</sup> July 2023 when the evidence of Flora Sande (hereinafter referred to as “PW 2”) was taken. When the matter came up for further hearing of the Prosecution’s case on 29<sup>th</sup> April 2024, the Accused person indicated that he wished to enter into a plea bargain.
3. He entered into a Plea Bargain Agreement on 20<sup>th</sup> November 2024 whereupon this court convicted him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.
4. The facts of the case were that on 26<sup>th</sup> June 2019, Patrick Sanda Anguche (hereinafter referred to as the “deceased”) left his home and proceeded to the home of his friend, one Issack Olumula Otieno to borrow money to buy food for his family. They went to Luanda town where the said Issack Olumula withdrew some money and bought him maize flour for the deceased.
5. Along the way, they met one Caroline Akinyi who used to co-habit with the Accused person. The said Caroline Akinyi accompanied the deceased to his house and he gave his wife (PW 2) the flour. The two (2) of them then went to the Accused person’s house and began drinking chang’aa that the Accused person had bought. The Accused person and the deceased were cousins.



6. When he got home in the evening, the Accused person found the deceased and the said Caroline Akinyi. He demanded to know from her why they had taken his changaa without his permission. A fight ensued between the Accused person and Caroline Akinyi and the deceased intervened to rescue Caroline Akinyi. However, the Accused person turned his anger on him.
7. The Accused person knocked the deceased down, went into the house, took a panga, cut a clothes' hanging line (manila rope) and strangled the deceased. After realising that the deceased was dead, he undressed him, pulled him inside the house and placed him on a chair.
8. At about 11.00p.m, he asked Caroline Akinyi to assist him dispose his body but she declined. He then pulled out the body, dragged it for about 150m and dumped it. He went back to the house, collected the deceased's clothes and placed them on his lifeless body. He further threatened Caroline Akinyi against disclosing what had happened.
9. In the morning of 27<sup>th</sup> June 2019, members of the public found the body of the deceased lying along a feeder road and notified the Village Elder who in turn informed the Area Assistant Chief and Luanda Police Station.
10. Police Officers visited the scene and took the deceased's body which had injuries at the back of the head, left leg and hand to Coptic Hospital Mortuary. Investigations commenced. The Accused person was arrested by members of the public on the same day and escorted to Luanda Police Station. When he was interrogated, he alleged that the said Caroline Akinyi knew what happened to the deceased. Police Officers then arrested her and she informed them of what had transpired.
11. A post mortem examination was carried out on 6<sup>th</sup> July 2019. The Pathologist, Dr Dixon Mchana (hereinafter referred to as "PW 1") formed the opinion that the cause of death was closed head injury secondary to blunt force trauma following assault.
12. The Accused person was then charged with the offence of murder. The Postmortem Report dated 6<sup>th</sup> July 2019 was produced as Exhibit 1.
13. Having entered into a Plea Bargain Agreement, the Accused person urged this court to sentence him to three (3) years. On its part, the State recommended a sentence of fifteen (15) years imprisonment.
14. In his mitigation, the Accused person pointed out that he was thirty-two (32) years of age. He stated that he had no previous criminal records. He averred that he committed the crime because he found the deceased enjoying romance with his wife in his matrimonial house.
15. He urged this court to consider the fact that he, his parents and siblings used to do manual work to sustain themselves. He said that he used to sell fruits while his mother sold groundnuts at the market. He stated that he dropped out of school due to lack of school fees.
16. He averred that from the Pre-Sentence Report dated 9<sup>th</sup> January 2025, it was clear that he could reform. He pointed out that the only reason that the said Report recommended a custodial sentence was due to the cultural practices which could not allow him to continue residing in the same locality. He said that he was ready and willing to sell his portion of land and relocate from their home.
17. He averred that he had been in custody since June 2019 and therefore urged this court to place him on a non-custodial sentence. He said that he was willing to comply with the court's directions.
18. On its part, the Prosecution asserted that the said Pre-Sentence Report dated 9<sup>th</sup> January 2025 was negative as the Accused person had been banished from his community due to cultural practices.



It stated that his family was apprehensive of the consequence of him being released back to the community.

19. It pointed out that the secondary victims were still bitter about this incident and prayed for a custodial sentence because they did not want to interact with him. The local administration also said that the environment back home was still hostile to him.
20. It asked this court to look at the severe head injuries that the deceased sustained and hence mete out a custodial sentence against him so that he could be rehabilitated and be a deterrence to him and others. It was emphatic that although he had said that he was willing to relocate, no arrangements of such relocation had been placed before the court which meant that his release would pose a danger to him.
21. According to the Pre-Sentence Report of J. Sahani, Probation Officer, Vihiga County that was filed on 10<sup>th</sup> January 2025, the Accused person was thirty-two (32) years old. He attended Ebwiranyi Primary School but dropped out in Standard Three (3) due to difficulties in comprehension. He resorted to freelance work in his local area and eventually became a fruit seller at Luanda Market earning Kshs 300/= per day on commission. Although he was married, his wife could not be traced as she left immediately the offence was committed.
22. He was a regular consumer of local brew and had been arrested previously for possession but was discharged by the court. The combination of marital difficulties and substance abuse was reported as potential factors that contributed to his criminal behavior.
23. He admitted to have committed the offence out of anger as stated that he found the deceased intimate with his spouse in his house at around 7.30 pm. He added that he hit the deceased on the head once with a club causing his instant death.  
  
He expressed remorse for his action that led to the death of his cousin. He pointed out that having been in remand for five (5) and a half (½) years, he had learned valuable lessons particularly about resolving conflicts constructively. He sought for a non-custodial sentence.
24. His family was apprehensive of re-uniting with him for fear of being banished by the community.
25. The deceased's family reported that the incident ripped them off their bread winner leaving the deceased's children orphaned at a young age. They averred that their mother was forced to seek help from other people unlike when the deceased was alive. They averred that they would never have any interaction with the Accused person and/or his family as was dictated by the Banyore customs. They were emphatic that he was not fit for release as he posed a threat if released and urged this court to mete out against him a custodial sentence.
26. The Local Administration and the community did not present any negative report in respect of the Accused person's behavior save for his alcoholism and his engagements in petty thefts. They stated that he also used to waylay people and rob them of their belongings. They pointed out that the environment was still hostile against him.
27. The Probation Office did not find the Accused person to have met the threshold to be considered for community rehabilitation. It recommended that a custodial sentence be meted on him.
28. 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.



29. 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.
30. 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.
31. 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.
32. It was clear from the facts of the case and the Pre-Sentence Report that the Accused person killed the deceased. They were biological cousins. According to the Pre-Sentence Report, they were good friends, drank alcohol and did casual jobs together. The Social Inquiry showed that the Accused found the deceased having coitus with his wife on his matrimonial bed. He killed the deceased of account of extreme anger. However, the jealousy that he expressed was not worth the trouble.
33. The circumstances of the murder were gory. The Accused person knocked the deceased, took a panga, strangled him with a manila rope, undressed him, placed him on a chair while he was dead, asked his girlfriend to help him dispose of deceased's the body, dragged his body one hundred and fifty (150) metres away and dumped his body then went back to his house and collected the deceased's clothes and placed them on his body. The picture of the deceased the following morning could only have traumatised the deceased's family and the community.
34. However, having considered the fact that the Accused person was so hurt by the betrayal of finding his blood cousin in bed with his girlfriend triggering a crime of passion, 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.
35. 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).
36. 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).
37. 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.”

38. The requirement under Section 333(2) of the *Criminal Procedure Code* was restated by the Court of Appeal in *Ahamad Abolfathi Mohammed & Another vs Republic* [2018] eKLR.
39. The Accused person was arrested on 28<sup>th</sup> June 2019. He was convicted on 20<sup>th</sup> November 2024. Although on 16<sup>th</sup> July 2019 Njagi J directed that a Pre-Bail Report be filed, there was no indication that the Accused person’s application for bail/bond was ever considered again. As he had never left custody since he was arrested, this was a period that ought to be taken into consideration while computing his sentence.

### **Disposition**

40. 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.
41. For the avoidance of doubt, the period between when he was first arraigned in court on 28<sup>th</sup> June 2019 and 25<sup>th</sup> 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).
42. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 26TH DAY OF FEBRUARY 2025**

**J. KAMAU**

**JUDGE**

