



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Engasia (Criminal Case 1 of 2024)
[2025] KEHC 1191 (KLR) (26 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 1191 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 1 OF 2024
JN KAMAU, J
FEBRUARY 26, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

NELSON ALUVAGA ENGASIA 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).
2. The matter was previously heard by Sitati J, Musyoka J, Amin J and Chirchir J. This court became seized of it on 11th June 2024 when parties indicated that they wished to proceed with the case from where it had reached.
3. Subsequently, the Accused person entered into a Plea Bargain Agreement on 31st October 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 in the year 2017, the Accused person herein befriended one Catherine Lusike. She was the mother to five (5) year old Peter Gichango Nganga (hereinafter referred to as the “deceased”). They started cohabiting in Nanyuki town. On several occasions, the said Catherine Lusike had wanted to part ways with the Accused person following domestic squabbles but he would always threaten to commit suicide if she left him.
5. On 19th May 2017, she went to work and left him with the deceased. When she returned home, she did not find them. The door to the house was locked with a new padlock. Upon inquiring from neighbours, they informed her that he left with the deceased on a bicycle. She tried to reach him through his phone but he was offline.



6. Her brother one Brian Ndagisi who was a neighbor helped her break the door. On entering the house, she found all the deceased's clothes were missing. She reported the matter at Gachuro Patrol Base.
7. The following day, on 20th May 2017, the Accused person called her and told her that he was with the deceased in Nairobi. He requested her to travel to Nairobi as from 26th May 2017 so that they could meet. She proceeded to make another report at Nanyuki Police Station.
8. Investigations commenced and through his phone number, he was located at his rural home at Shikhomoli village, Hamisi Sub-County within Vihiga County. She then sought the assistance of Serem Police Station to arrest him.
9. On 24th May 2017, Police Officers from Serem Police Station raided his home but he and the deceased were not there. On 3rd August 2017, the Police Officers went to his home again but they did not find him. They took his mother, one Grace Uside Muabi to the Police Station to assist with the investigations. She called him and asked him to bring the deceased to the Police.
10. The next day, on 4th August 2017, his wife, one Linet Imali, who had been staying with the deceased took him to her parents' home at Kapkerer. She told them that the Accused person would pick up the deceased and take him to Serem Police Station.
11. On 7th August 2017, at about 6.30 am, the Accused person went to his in-law's home, picked the deceased and his clothes and left on a motorcycle which was being ridden by one Christopher Keino. Along the way, the Accused person asked the said Christopher Keino to stop and wait for him. He went through a narrow path with bushes while carrying the deceased on his shoulders. He came back without the deceased and they proceeded to Kapkerer Shopping Center where he paid the said Christopher Keino and they parted ways.
12. On the same day of 7th August 2017, Police Officers from Serem Police Station got information that there was a body of a boy aged about five (5) years that had been dumped in a trench within Shikhomoli village. They proceeded there to the scene and found a body which had a cut wound on the face, fingers and a stab wound to the stomach. The intestines were hanging out. They processed the scene and removed the body to Vihiga County Referral Hospital Mortuary.
13. The deceased's mother was informed of the incident. She positively identified the body as that of her son, the deceased. On 11th August 2017, the deceased's blood stained clothes were retrieved from a pit latrine at the home of the Accused person's in-law, one John Busaka.
14. On 12th August 2017, an autopsy was done and the doctor formed the opinion that the cause of death was intrabdominal hemorrhage strangulation.
15. On 11th February 2018, Police Officers from Embakasi Police Station arrested the Accused person within Nairobi and was later handed over to Police Officers at DCI Serem. The Investigating Officer, PC (W) Romana Oduor established that the Accused person was the last person to have been seen with the deceased and that he had taken him away with an aim of forcing the deceased's mother to mend the failing relationship between them. After completion of investigations, the Accused person was charged with the offence of murder. The Postmortem Report dated 12th August 2017 was produced as Exhibit 10.
16. Having entered into a Plea Bargain Agreement, the Accused person urged this court to sentence him to ten (10) years. On its part, the State recommended a sentence of twenty-five (25) years imprisonment.
17. The Accused person stated that his pleading guilty to manslaughter showed how remorseful he was. He said that he was ready and willing to mend his ways with the community and family that he offended.



- He averred that he had been in custody from the time he was arrested during which time he had learnt a lot of lessons. He explained that he had received several trainings on carpentry, theology which he believe would enable him eke a living as compared to when he was arrested, he had no such training. He said that he was saved.
18. He pointed out that his family was poverty stricken and prayed for leniency as he had indicated in the Plea Bargain Agreement to enable him take care of his family and especially his mother. He said that he was saved, aged thirty-eight (38) years, still in his prime years which meant that he could be useful to himself and the community.
 19. He asked this court to consider the number of years he had remained in custody while the trial was on going while computing the custodial sentence. He contended that he had no previous criminal records and therefore ought to be treated as a first offender.
 20. On its part, the Prosecution stated that the Pre-Sentence Report was negative. It pointed out that the deceased was a five (5) year old boy who did not deserve to die in the manner that he did. It said that he was a victim of a misunderstanding between the Accused person and his mother who were lovers. It invited this court to look at the injuries that the deceased had sustained being stab wounds to the neck, chest and abdomen.
 21. It added that the local administration viewed the Accused person, who used drugs, as a criminal. It stated that the community members were still bitter about the incident and the local administration feared for his own safety and that of the community. The mother to the victim was said to have still been tormented by the incident and declined to be interviewed.
 22. It urged this court to mete out a custodial sentence as a deterrent to the Accused and other members of the public who would want to commit a similar offence. It was emphatic that justice should not only be served but it must be seen to have been served.
 23. According to the Pre-Sentence Report of Oliver Simiyu, Probation Officer, Vihiga County that was dated 28th November 2024 and filed on 20th December 2024, the Accused person was thirty-eight (38) years old. He attended Shikomoli Primary School but did not proceed to secondary level of education due to alleged failure of his parents to support him.
 24. Out of desperation, he moved to Nairobi in search of a job opportunity. He gained masonry, tiling and painting skills which he acquired through job training and used the same to earn his living until he later moved to Nanyuki. He had married one Linet Emali and were blessed with one child but after his arrest, his wife left and remarried in Migori County. While in Nanyuki, he married Catherine Lusike, the deceased's mother. He was a Christian and consumed alcohol.
 25. He admitted to having committed the offence and blamed it on anger on learning that his wife was unfaithful. He pointed out that he had long stayed in custody and had suffered enough to teach him enough lesson. In that premise, he sought for a lenient sentence.
 26. His family was resentful and did not want to be associated with him. The secondary victim was also resentful and lost her composure in the course of interview. She was reluctant to give her opinion in regard to his probable sentence.
 27. The Local Administration and the community members described him as a criminal with unbecoming behavior and were apprehensive of having him back in the community as their lives and safety would be at risk.



28. The Probation Officer did not find the Accused person to have met the threshold to be considered for community rehabilitation. It urged this court to deal with him in any other way that this court would deem fit.
29. 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.
30. 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.
31. 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.
32. Killing someone is an abomination in the society and that explained why the Accused person'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.
33. It was clear from the facts of the case and the Pre-Sentence Report that he killed the deceased who was an innocent child due to conflicts with his mother. The deceased who was his step son. The jealousy that he expressed thinking that his wife was unfaithful was not worth the trouble.
34. 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 twenty-five (25) 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 11th February 2018. He was convicted on 31st October 2024. He was not released on bond as the Pre-bail Report was unfavourable. This was a period that therefore 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 twenty-five (25) years imprisonment to run from the date of this Sentence.
41. For the avoidance of doubt, the period between when he was arrested on 11th February 2018 and 25th 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

