



**Republic v Muhisi (Criminal Case E015 of 2023)
[2025] KEHC 1086 (KLR) (26 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 1086 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E015 OF 2023
JN KAMAU, J
FEBRUARY 26, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

FRANCIS LUSAVA MUHISI 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). This matter was previously heard by Musyoka JJ. This court became seized of it on 13th December 2023 when the parties indicated to court that the same proceed from where it had reached. When the matter came up for defence hearing on 5th November 2024, the Accused person indicated to court that he wished to enter into a plea bargain agreement.
2. He entered into a Plea Bargain Agreement on 7th 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.
3. The facts of the case were that on 6th December 2017, the Accused person was cohabiting with Ruth Khachea Ngaira (hereinafter referred to as the “deceased”) at their rural home in Kaptenje Village. They had a disagreement and the deceased took a knife threatening to kill herself while she ran out of the house. The Accused person followed her and managed to snatch the knife from her.
4. The Accused person got angry as that was not the first time the deceased had threatened to kill herself and he took a piece of wood and started beating her several times. She started bleeding profusely on her forehead but he left her sleeping on her bed as he went to buy paraffin. When he came back at around 2000 hours, he found the deceased still lying on the same mattress in the bedroom but he did not talk to her. He went ahead and started cooking and when the food was ready, he called the deceased to wake up and eat but she could not wake up. He slept with the deceased body that night.



5. On the morning of 7th December 2017, he went to look for transport to ferry the deceased's body when he met his two (2) friends who assisted him ferry the body to Muhudu area past Kaimosi where they dumped it a few meters from the road.
6. Thereafter, the Accused person together with his friends went to a chang'aa den and after drinking, he went to the house of one Fred Aringo where he slept until the 8th December 2017 when he went to visit his ex-wife, one Nancy Akasa who stayed at Shipala. He was later traced down by police and arrested on 10th December 2017.
7. The deceased body was discovered on 8th December 2017 at around 0700 hours in a farm next to Kaimosi Muhundu road by one Francis Luvutes who had spotted a nylon sack hanged on a tree and when he moved closer, he saw a body of a human being since it was not covered from the waist upwards.
8. The Police at Cheptulu Police Station were informed and who in turn informed the family of the deceased and who were able to positively identify the body of the deceased as their kin. The deceased body was retrieved and transported to Vihiga County Referral Hospital mortuary.
9. A postmortem examination was conducted on 13th December 2017. The doctor formed the opinion that the cause of the deceased's death was strangulation g-g subluxation.
10. After investigations were completed, the Accused person was charged with the offence of murder. The Postmortem Report dated 13th December 2017 was produced as Exhibit 7.
11. 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 ten (10) years imprisonment.
12. In his mitigation, the Accused person said that he regretted the offence which was caused by his poor upbringing and a family that did not care for each other. He said that that could explain why he started abusing alcohol. He pointed out that the deceased was also an alcoholic. He explained that his marriage to the deceased, which had no blessings from his father, was not harmonious. He said that this could have been due to the fact that the deceased was older than him.
13. He asserted that he had been in custody since 10th December 2017 and had therefore spent seven (7) years and seventy-two (72) days in custody. He said that this period had served as a lesson to him. He added that this was also demonstrated by the fact that it was him who proposed that this matter be resolved by way of plea bargain.
14. He said that apart from his family, the larger community members were ready to welcome him back. He urged this court to note that at some point, the community had blamed the deceased for her own death. He averred that his family's allegation that anyone who had committed such a grievous offences could not re-join his family, a reason they advanced for him to continue staying in prison would infringe on the provisions of Article 2(4) of the *Constitution* of Kenya as it tended to gag the powers of this court and his fundamental rights which included right of movement and right of association.
15. He submitted that under Article 50(2) of the *Constitution* of Kenya, all accused persons have a right to benefit of the least severe of the prescribed punishment of an offence. He stated that he had a son whose future hang in the balance and urged this court to mete upon him the least prescribed sentence bearing in mind that he had been reformed during his period in remand.
16. On its part, the Prosecution told this court that the Pre-Sentence Report was negative. It said that it showed that the Accused person did not enjoy good relations with his siblings and that since his arrest, they had never visited them as they were still bitter with him. It said that he had no place to call home as he sold his land and put up in various rental houses in different places. It averred that at the time of



- his interview, his family did not want to associate with him. It added that he could not return to the community due to cultural practices associated with the offence he committed.
17. It asserted that the deceased's family were still traumatised by the incident and that in fact the deceased's mother developed heart complications which led to her death.
 18. It urged this court to look at the injuries that the deceased sustained and mete upon the Accused person a custodial sentence because despite the issues they had, she did not deserve to die in such an inhuman way.
 19. According to the Pre-Sentence Report of J. Sahani, Probation Officer, Vihiga County, dated and filed on 5th February 2025, the Accused person was forty-seven (47) years old. He attended Kipkelion Soil Conservation Primary School where he studied up to class five (5). He then moved to Kisii to stay with Jane the sister and was enrolled at Othanyore Primary School. However, he dropped out of class six (6). He resorted to casual jobs mainly brick-making for a living. He had parted ways with his first wife with whom they had been blessed with one child. He started cohabiting with the deceased in 2013 but as at the time of her death, they had not formalized their marriage nor blessed with children.
 20. Although he expressed regret for committing the offence, he seemed to apportion blame on the deceased claiming that she used to make several suicide attempts. He pointed out that he had been in remand from the year 2017 and believed the period had exposed him to hard lessons of life. Thus, he pleaded for a non-custodial sentence.
 21. His siblings portrayed a picture of a disjointed family and were not ready to welcome him back home.
 22. The deceased's family were bitter towards the Accused person. They pointed out that the deceased had left behind a son who faced the future without the support of his mother and potentially without the opportunity for a proper education. They reported that the said death traumatized the deceased's mother who developed heart complications to which she eventually succumbed. They added that on the date of discovery of the body of the deceased, the Accused person was nearly lynched had it not been for the intervention of the security apparatus. They believed that his life was at risk if spotted anywhere. They opined that he should remain in jail for his safety.
 23. His neighbors vouched for his release. They blamed the deceased on grounds that she was an alcoholic and had a habit of carelessly insulting others without due reasons. The Local Administration pointed out that the Accused person used to drink alcohol and was rough and confrontational. It opined that he could be released if he had reformed.
 24. The Probation Officer did not find the Accused person to have met the threshold to be considered for community rehabilitation.
 25. 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.
 26. 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.



27. 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.
28. 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.
29. The Accused person had never been charged with any offence prior to the incident herein. It was clear from the facts of the case and the Pre-Sentence Report that he killed the deceased after an altercation. The deceased who was cohabiting as his wife.
30. 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 ten (10) 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.
31. 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).
32. 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).
33. 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.”
34. 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.
35. The Accused person was arrested on 10th December 2017 and was convicted on 7th November 2024. Although he was granted bond, he did not seem to have posted the same. This was a period that therefore ought to be taken into consideration while computing his sentence.

Disposition

36. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to ten (10) years imprisonment to run from the date of this Sentence.



37. For the avoidance of doubt, the period between when he was arrested on 10th December 2017 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).
38. Taking into account the said period that he was in custody and the remission period, it is evident that he has already completed the sentence. Accordingly, it is hereby directed that the Accused person be and is hereby released from custody forthwith unless he be held for any other lawful cause.
39. It is so ordered.

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

J. KAMAU

JUDGE

