



REPUBLIC OF KENYA



**Republic v Phanuel (Criminal Case 5 of 2023)
[2025] KEHC 5449 (KLR) (29 April 2025) (Sentence)**

Neutral citation: [2025] KEHC 5449 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 5 OF 2023**

**JN KAMAU, J
APRIL 29, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMSON OMULANDO PHANUEL 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 transferred from Kakamega High Court. This court became seized of the same on 16th October 2023.
2. When it came up for hearing of the Prosecution's case on 3rd June 2024, the Accused person indicated that he wished to enter into a plea bargain. He entered into a Plea Agreement on 5th December 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 28th December 2015, at 9.00p.m, Omuhinda Mmutelema (hereinafter referred as "the deceased") was at a funeral vigil of the late Musumba Museveni. At around 2.00am, he decided to go back to his home. About 250m from the funeral vigil, he was attacked by two (2) people. He only managed to identify the Accused person as one of the attackers. The Accused person and his accomplice then ran away.
4. Members of the public who were at the funeral rushed to the scene and found the deceased lying on the road with blood oozing from his head. One Christine Asisa Susu interrogated him and he informed her that he had been attacked by the Accused person and another person whom he did not know.
5. Police Officers from Luanda Police Station were informed of the incident. The deceased was rushed to Vihiga County Referral Hospital where he was pronounced dead on arrival. Members of the public in company of the Chief, proceeded to the home of the Accused person, arrested him and recovered one



- grey, muddy, blood-stained dust coat he had been seen wearing at the funeral. He had hung it outside his house. He was handed over to the police together with the dust coat and investigations commenced.
6. From the investigations, there was a dying declaration made by the deceased to the said Christine Asisa Asusu. The Accused person was later charged with the offence of murder.
 7. On 31st December 2015, a postmortem was done and the doctor formed an opinion that the cause of the deceased's death was severe head injury secondary to fractured skull due to deep cut wound. The Postmortem Report dated 15th December 2015 was produced as Exhibit 1.
 8. Having entered into a Plea Agreement, the Accused person urged this court to sentence him to ten (10) years. On its part, the State recommended a sentence of twenty (20) years imprisonment.
 9. In his mitigation, the Accused person pointed out that he was aged twenty (21) years at the time of the incident, that he was married and a father on one (1) child who were wholly dependent on his. He denied having been a gang member. He also pointed out that although the Pre-Sentence Report stated that he was in employment in 2017, he was already in custody.
 10. He said that he was remorseful and that during the trial, he had not been charged with any other offence or cited for any discipline issues in prison. He asserted that the victim's family had forgiven .
 11. He said that he was easily excitable as a young person and took full responsibility of his actions. He urged this court to take into account the nine (9) years that he had been in prison during which time he had learnt skills that would help him integrate easily in the community. He undertook to submit himself to the supervision of the Chief, a position that his father supported to ensure that he did not commit any more crimes.
 12. On its part, the Prosecution urged this court to mete upon the Accused person a custodial sentence as had been recommended by the Probation Officer. It pointed out that the Pre-Sentence Report was negative. It averred that the community was still fearful of him as he was a gang member as he was a gang member. It urged this court to consider the objectives of sentencing and to ensure that justice was not only done but that the same had to be seen to have been done.
 13. According to the Pre-Sentence Report of J. Sahani, Probation Officer, Vihiga County which was dated 29th January 2025 and filed on 6th February 2025, the Accused person was thirty-one (31) years old. He attended Esiembero Primary School but dropped out in Standard Four (4) due to difficulties in comprehension. While staying with his father, he resorted to freelance casual jobs in Ongata Rongai, Kajjado County. He later secured a casual job with a Church pastor cum medical doctor namely Orsborn in Donholm, Nairobi. He worked for the Pastor until his arrest in December 2015 when he had come for the Christmas holiday.
 14. He had a history of drug and substance abuse and hanging out with anti-social friends who also abused drugs. The Probation Office opined that this might have influenced him to develop anti-social behavior such as being unruly and rough.
 15. He denied having committed the offence and did not give any account of how he was linked to the offence despite the fact that the deceased named him as one of his attackers before his death. He was not remorseful and seemed to be ready for a jail term.
 16. His family was supportive of him despite the predicament as they maintained contact with him by regularly visiting him in remand and giving him re-assurance. They were optimistic of his release and were ready to guide him in the re-integration process.



17. The deceased's family reported that the incident ripped them of a great helper in the home and that after the death of the deceased, his brother who works in Nairobi had to employ a person to manage the home. Even though they claimed to have forgiven the Accused person and his family, their assertions were veiled with emotions and distress.
18. The Local Administration and the community reported that the deceased's death was the second in row after his neighbour's son was killed by unknown persons. They pointed out that the incident was universally condemned in the entire village. They stated that the Accused person was viewed as a danger to the community as he was allegedly involved in a dangerous gang that instilled fear among the residents. They added that the said gang was known for causing disturbances in the village, operating in the cover of the night while wielding pangas, engaging in ambushes, maiming, theft, robbery and widespread terror.
19. The Probation Office did not find the Accused person to have met the threshold to be considered for community rehabilitation.
20. 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.
21. 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.
22. 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.
23. Killing someone is an abomination in the society and that explained why the Local administration and community did not want him released on a non-custodial sentence. The deceased's family may have forgiven but that justice not only needed to be done but it had to be seen to be done for the deceased.
24. It was clear from the facts of the case and the Pre-Sentence Report that the Accused person killed the deceased. There was a dying declaration and blood-stained dust coat belonging to the deceased was also found at the Accused person's home.
25. The circumstances of the murder were gory. The deceased sustained a severe head injury, fracture of the skull and deep cut wound. He seemed to have been attacked with a sharp object(s). The Accused person also appeared to belong to a dangerous gang that was terrorising villagers and in fact, a neighbour had died in the hands of unknown assailants.
26. The attack on the deceased was an unprovoked attack and the Accused person's excitability due to his young age coming from a disco matanga that he urged this court to consider during his mitigation was inexcusable. He did not value the deceased's life. This was unacceptable. He attacked the deceased for no reason as if it was a sport. He had to bear the consequences of his actions.
27. The assertion that the Pre-Sentence Report contained erroneous allegations was not very material as the Accused person did not provide any evidence to suggest that the Probation Office did not carry



out social inquiries as had been set out in the said Report or that the inquiries were fabricated. In the absence of any evidence to the contrary, this court believed the contents of the said Report.

28. This court considered the Accused person's mitigation, the Prosecution's response thereto, the Pre-Sentence Report. Bearing in mind that sentencing was the sole discretion of the court, it 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 Agreement. This court tempered justice with mercy because of the folly of his young age at the time he committed the. However, if the matter had proceeded as a murder case, this court would have meted out on him a stiffer sentence. Indeed, this case had elements of murder, the action, the intention and malice aforethought to cause the deceased harm
29. 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).
30. 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).

31. 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.”

32. The requirement under Section 333(2) of the *Criminal Procedure Code* was restated by the Court of Appeal in *Abamad Abolfathi Mohammed & another v Republic* [2018] eKLR.
33. The Accused person was first arraigned in court on 7th January 2016. He was released on bond on 25th January 2016. He had been released on bond on 25th February 2016. He absconded court whereupon his bond was cancelled by Musyoka J on 9th December 2020. He remained in custody until 27th March 2023 when P.J. Otieno J reinstated his bond terms. It appears that he may not have been able to get a surety as he remained in custody for the remainder of the time the matter was in court. He was convicted on 5th December 2024. The period he had spent in remand before his release on bond ought to be taken into consideration while computing his sentence.

Disposition.

34. 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.
35. For the avoidance of doubt, the period between when he was first arraigned in court 7th January 2016 and 25th January 2016 when he was released on bond and between 9th December 2020 and 28th April



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).

36. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 29TH DAY OF APRIL 2025

J. KAMAU

JUDGE

