



**Republic v Eregwa (Criminal Case 7 of 2023) [2025] KEHC 7108 (KLR) (29 May 2025) (Sentence)**

Neutral citation: [2025] KEHC 7108 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE 7 OF 2023**

**JN KAMAU, J**

**MAY 29, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**BRIAN MULISHA EREGWA ..... 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). He entered into a Plea Bargain Agreement on 24<sup>th</sup> February 2025 whereupon this court convicted him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.
2. The facts of the case were that on 14<sup>th</sup> June 2016, at about 1800 hours, Kelvin Onzere (hereinafter referred to as the “deceased”) arrived home from school and found his uncle, the Accused person herein armed with a piece of firewood. Without uttering a word, the Accused person held him and hit him on the head with a piece of firewood several times and then dumped him in a hole with water.
3. Faith Erosa, a sister to the deceased arrived and found him crying. She pulled him out of the hole and raised an alarm. She rushed to call Zedekiah Donga, their neighbour. On her way, she met the Accused person who asked her why she was crying. The said Zedekiah Donga arrived at the scene and together with Tafrosah Kalegi Agolla, they rushed the deceased to Mbale District Hospital where he was admitted. He died at around 2300 hours on the same day.
4. The Village Elder, Mr Sammy Vulimu, was notified of the death and he mobilised members of the public who arrested the Accused person at his house and escorted him to Serem Police Station.
5. Investigations commenced and police officers visited the scene. However, the murder weapon was not recovered.



6. A Post-mortem examination on the body of the deceased was carried out on 20<sup>th</sup> June 2016. The Pathologist formed the opinion that the cause of his death was severe head injury (penetrating injury) secondary to depressed skull fracture. The Post-mortem Report dated 20<sup>th</sup> June 2016 was produced as Exhibit 1.
7. After the investigations were concluded, the Accused person was charged with the offence of murder
8. Having entered into a Plea Agreement, the State recommended a sentence of fifteen (15) years imprisonment. The Accused person did not propose any sentence that ought to be meted upon him.
9. In his mitigation, the Accused person pointed out that he was deeply remorseful and that from the onset of this matter he had always admitted that he committed this offence. He stated that he had been in remand since 14<sup>th</sup> June 2016 and asked this court to deem the same as part of his sentence.
10. He also urged this court to take into consideration that he had mental issues due to drug use as was indicated in the Pre-Sentence Report. He averred that he had been admitted at Mathare Mental Hospital when this matter was ongoing. He therefore asked this court to consider that his mental status contributed to the causation of this incident.
11. He added that although the victim's family was still bitter and they were not ready to receive him back to the community, which anger he said was justified because they lost a young person, he asked the court to consider that he was also a victim because the deceased was his nephew. He pointed out that the other victims were his siblings and parents.
12. He said that he needed help by way of getting treatment and pleaded with this court to give him a second chance to re-build his life having committed the offence at the tender age of twenty three (23) years. He said that he was now thirty two (32) years old and had learnt his lesson. He thus prayed for leniency.
13. On its part, the Prosecution submitted that a young life was cut short by the actions of the Accused person. It emphasised that the said life was cut short by a relative, an uncle. It contended that while the Accused person had psychiatric issues, a custodial sentence did not hinder an accused person getting medical treatment for mental illness.
14. It further stated that a custodial sentence would be beneficial to the Accused person as his family and community did not want to receive him back. It said that the fifteen (15) years it had proposed would be sufficient. It did not object to the court factoring in the period that he spent in court while the case was ongoing.
15. According to the Pre-Sentence Report of Mariam Korir, Probation Officer, Vihiga County that was dated and filed on 14<sup>th</sup> March 2025, the Accused person was thirty-two (32) years old. He attended Murugusi Primary School in Uasin Gishu County where they had settled. He left school while in Class seven (7) in 2007 when they relocated to Malinda Village in Hamisi Sub-County. He refused to join Malinda Primary School to continue with his education despite his mother's efforts that he do so.
16. He engaged in cobbler and radio repair works before moving to Nairobi to work as a casual labourer in construction sites. He occasionally returned home and could stay for about three (3) to four (4) months before returning to Nairobi.
17. He was single and had been involved in drugs and substance abuse especially bhang smoking for a long time. He was admitted at Mathare Mental Hospital for mental instability after committing the offence. None of his family members ever visited him while he was in hospital. He was an introvert and his general conduct was influenced by peer pressure and long-term abuse of drugs.



18. He admitted having committed the offence herein. He stated that the deceased who was his nephew, aged twelve (12) years old had refused to assist him with some boiled maize as a result of which he hit him on the head with a hammer. He sought for forgiveness from his family for the offence. He was remorseful and prayed for a lenient sentence.
19. His family was bitter about the death of their kin. They pointed out that the incident had brought hostilities in the family. The victim's mother and all his siblings did not want to associate with him. They urged the court to punish him for the offence he committed. They were apprehensive that if he was released, he would be lynched by the community. Only his mother and paternal grandfather had visited him when he was remanded at Kakamega GK Prison.
20. The Local Administration and the community reported that they were not ready to receive him back in the society as his home environment was hostile and would compromise his safety and that of his family if he returned home.
21. The Probation Office found him unfit for community rehabilitation. It urged the court to dispense this matter as deemed fit.
22. 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.
23. 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.
24. 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.
25. 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.
26. The Accused person was under a duty to protect the deceased, who was his nephew, a child aged twelve (12) years old. Instead, he hit him with a hammer several times after the deceased purportedly denied him some boiled maize. He then dumped him in a hole with water. The age difference between them showed the defenceless state that the deceased found himself in at the material time. The circumstances of this murder were gory to say the least.
27. Be that as it may, it was evident that the Accused person abused bhang. The fact that he was admitted at Mathare Mental Hospital showed that he may not have been stable at all times. His plea was in fact deferred as he was mentally unstable and an order was made for him to be re-admitted to the hospital. He appeared to be mentally stable when he appeared before this court for the first time on 29<sup>th</sup> June 2023. However, the court gave an order for him to be re-admitted to Mathare Mental Hospital on 16<sup>th</sup> November 2022 after he started exhibiting signs of mental instability.



28. When he appeared before this court on 14<sup>th</sup> November 2024, he indicated that he was now feeling better after receiving treatment. There was likelihood that he committed the offence due to mental instability. However, the same was never raised as a reason for having committed the said offence. Indeed, when he initially took plea on 20<sup>th</sup> March 2017, he admitted that he killed the deceased but that it was accidental. There was no defence of mental instability that was advanced at the time. He also appeared to be coherent on that date.
29. Having considered the facts of this case, his 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 there was a possibility that he may not have been mentally stable at the time he committed the offence. However, if he was mentally unstable at the time, no document was adduced before this court to assist it in making a determination on his mental status.
30. Under normal circumstances, if the matter had proceeded as a murder case and in the absence of any evidence of medical instability, this court would have meted out on the Accused person 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 14<sup>th</sup> June 2016 and arraigned in court on 23<sup>rd</sup> June 2016. Although he was granted bond, he did not seem to have posted the same. He was convicted on 24<sup>th</sup> February 2025. 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 fifteen (15) years imprisonment to run from the date of this Sentence.



37. For the avoidance of doubt, the period between 14<sup>th</sup> June 2016 and 28<sup>th</sup> May 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. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 29<sup>TH</sup> DAY OF MAY 2025**

**J. KAMAU**

**JUDGE**

