



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Siku & 2 others (Criminal Case 8 of 2022)  
[2025] KEHC 7488 (KLR) (29 May 2025) (Sentence)**

Neutral citation: [2025] KEHC 7488 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE 8 OF 2022**

**JN KAMAU, J  
MAY 29, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**DANIEL ASITWA SIKU ..... 1<sup>ST</sup> ACCUSED**

**WALTER AMOS OMONDI ..... 2<sup>ND</sup> ACCUSED**

**MICHAEL AMWAI WILLIAM ..... 3<sup>RD</sup> ACCUSED**

**SENTENCE**

1. On 27<sup>th</sup> February 2025, this court convicted the 1<sup>st</sup> and 3<sup>rd</sup> Accused persons herein for the offence of the murder of Japheth Oketch Okale (hereinafter referred to as “ the deceased”) contrary to Section 203 as read with Section 204 of the *Penal Code* thereof under Section 215 of the *Criminal Procedure Code* Cap 75 (Laws of Kenya). The 2<sup>nd</sup> Accused person was acquitted under Section 215 of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).
2. In his mitigation, the 1<sup>st</sup> Accused person indicated that he was forty- eight (48) years old having been born in 1977. He said that the Pre-Sentence Report dated 20<sup>th</sup> March 2025 was positive towards him. He said that his first wife died and left behind two (2) children who have now completed Form Four (4) and were awaiting to join universities and/or colleges. These were children with this first wife.
3. He said that he was married to a young wife who he loved a lot and she needed him as a husband. He pointed out that she was even present during his sentencing to give him moral support. He said that he had four (4) children with the second wife who were young and in Junior Secondary School and the remaining two (2) were in PP 1 and PP 2. He averred that they were highly dependent on him as the sole bread winner. He averred that he was a boda boda rider and also sold cattle in order to provide for the family.



4. He expressed remorse and regretted the incident that occurred. Although he maintained that he was still innocent but he had been found on the wrong side of the law, he prayed for leniency.
5. He added that he was a law-abiding citizen which was evident from the Pre-Sentence Report. He pointed out that his family, community and local Administration had given a positive report that he related well with the community and had pleaded with the court to consider him being put on Probation so that he could be rehabilitated. He urged this court to consider the recommendation in the Pre-Sentence Report that he could serve a Probation sentence and come with an independent decision on the sentence to mete out to him.
6. He said that he was arrested on 20<sup>th</sup> January 2014 and he was released on bond in 2016. He asked this court to take into account this period while meting out the sentence against him.
7. On the other hand, the 3<sup>rd</sup> Accused person stated that he was aged thirty seven (37) years. He said that he was married and he and his wife were blessed with one (1) child. He stated that his wife left him after he was incarcerated and they parted ways whereupon she left the child who was now in Grade Eight (8) schooling at Makuchi Primary School. He said that the child depended on him because she had stayed with him as a single parent but she was now staying with his elderly and sick mother after he was convicted of the offence herein. He averred that he was the sole provider of the family.
8. He expressed remorse and regretted the incident and prayed for leniency despite the Pre-Sentence Report not having being positive. He said that this court has the power and discretion to give its independent decision because the said Report merely provided it guidance. It urged this court to come up with its own independent sentence but nonetheless pleaded that he be given a non-custodial sentence.
9. He said that he was arrested on 20<sup>th</sup> January 2014 and was released on bond in 2020 and urged this court to consider this period at the time of meting out the sentence on him.
10. On its part, the Prosecution stated that the life of a person was lost due to a love triangle. It submitted that the 1<sup>st</sup> and 3<sup>rd</sup> Accused persons should be given a custodial sentence despite their counsel's and the Probation Office's recommendation to send a message to would-be offenders.
11. It pointed out that except the deceased's aunt, all the deceased's relatives were not willing to be interviewed and left the matter to the court which showed that they were still bitter with the incident. It said that a custodial sentence would show the family that justice had been done.
12. It averred that the 1<sup>st</sup> and 3<sup>rd</sup> Accused persons had still denied committing the offence despite having been convicted of the offence which showed that they were not remorseful of the offence that they committed. In particular, it said that the Pre-Sentence Report was clear that the 3<sup>rd</sup> Accused person was not remorseful at all for having committed the incident herein.
13. It did not object to the period the 1<sup>st</sup> and 3<sup>rd</sup> Accused persons had spent in custody when the case was on-going being granted at the time the court was giving its sentence.
  1. According to the Pre-sentence Report of Mariam Korir, Probation Officer, Vihiga County dated and filed on 20<sup>th</sup> March 2025, the 1<sup>st</sup> Accused person was forty-eight (48) years old. He studied at Emwatsi Primary School but dropped out at Class seven (7) due to poverty. Thereafter, he engaged in casual jobs and selling cattle after learning the business from his father.
  2. He re-married after his first wife died. He was blessed with two (2) children in his first marriage and four (4) children in his second marriage. He was of good health and was born of a Christian



family but converted to Islam in his adulthood. He had no history of drug abuse and was a first-offender.

3. He denied having committed the offence and blamed his co-accused, the 3<sup>rd</sup> Accused person herein for the offence. He sought for a lenient sentence to take care of his family. He pointed out that her children would not study if he was incarcerated.
4. His family vouched for him as a well-mannered person who found himself in this case because he was at the scene of crime. They blamed the 3<sup>rd</sup> Accused person for the act and pleaded with the court to be lenient on him since he had a family to raise.
5. The deceased's family was still bitter about the loss of their kin. They condemned the offence that led to his death and did not want to comment on this incident as it would re-open their wounds.
6. The Local Administration and the community opined that the 1<sup>st</sup> Accused person lived well in the community and related well with people. They indicated that he was a trust-worthy person and most community members trusted him in his boda boda work. They pointed out that he had no previous criminal history and although he may have assisted to assault the deceased, he did not intend to kill him. They therefore urged this court to consider him for community rehabilitation.
7. The Probation Officer opined that although the 1<sup>st</sup> accused person was suitable for community rehabilitation, considering the nature of the offence, she could not recommend the same. She urged the court to dispense the matter as deemed fit.
8. Going further, according to the Pre-sentence Report of the said Probation Officer, Vihiga County, Mariam Korir dated 19<sup>th</sup> March 2025 and filed on 20<sup>th</sup> March 2025, the 3<sup>rd</sup> Accused person was said to have been thirty-seven (37) years old. He studied at Eshibinga Primary School up to Class four (4) when he dropped out due to challenges at home after the death of his father. Thereafter, he engaged in casual jobs around his home area.
9. He was a single man with one (1) child. Later on, he moved to work as herd's boy in Vihiga County where he was working for 1<sup>st</sup> Accused person's father. He had stayed with them for one (1) month before the offence that led to his arrest. He was a Christian. He was of good health save for complaints of dizziness leading to him fainting currently.
10. He denied committing the offence and sought for a lenient sentence for him to take care of his family. He was a first-offender. His family vouched for him as a good person and explained that the deceased and the offender were friends and that he may have not intended to kill him.
11. The victim's family condemned the offence that led to the death of their kin. They also explained that the 3<sup>rd</sup> Accused person and the deceased were friends and both hailed from Butere and as such, the 3<sup>rd</sup> Accused person would not have killed the deceased. They refused to comment further on the case stating that it would re-open their wounds.
12. The Local Administration in Vihiga was unable to tell the character of the 3<sup>rd</sup> Accused person as he had stayed in Vihiga for a short time. They added that the incident occurred due to love triangle between him and the deceased. They left the matter to court for final decision-making. The Local Administration in Butere where the 3<sup>rd</sup> Accused person hailed from pointed out that he abused drugs and he did not relate well in the community especially after using alcohol.



13. The Probation Officer opined that the 3<sup>rd</sup> Accused person was not fit for community rehabilitation but could be considered for a lenient sentence.
14. 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.
15. It was important that the sentence communicate to the community, condemnation of their 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.
16. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of the offence at the time of sentencing them, chances of the 1<sup>st</sup> and 3<sup>rd</sup> Accused persons being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
17. After serving a sentence, the offender could rejoin society as a reformed person capable of re-integration into the society. He would have learnt his lesson and others would have learnt through him. Killing someone was an abomination in the society and hence justice not only needed to be done but it had to be seen to be done.
18. This court looked at the Post-mortem Report dated 22<sup>nd</sup> January 2014 and noted that the deceased died as a result of brain haemorrhage or injury with resultant cardiorespiratory arrest probably from blunt trauma. This was evidence of serious assault of the deceased by the 1<sup>st</sup> and 3<sup>rd</sup> Accused persons.
19. Although the 1<sup>st</sup> and 3<sup>rd</sup> Accused persons and their families pleaded for leniency, this court did not find it prudent to grant them a non-custodial sentence due to the nature of the offence. The injuries the deceased sustained showed the malice that the 1<sup>st</sup> and 3<sup>rd</sup> Accused persons had and showed their intention of killing him. The 3<sup>rd</sup> Accused person cut the deceased on the head. They continued beating him for about fifteen (15) minutes even after they had over powered him. The 1<sup>st</sup> Accused person then kicked him on the chest. He fell down and collapsed. They then walked away and left on their motor cycles.
20. Both the 1<sup>st</sup> and 3<sup>rd</sup> Accused persons had continued to deny that they committed the offence. This was evidence that they were really not remorseful of what happened to the deceased or they did not acknowledge and/or appreciate the magnitude of the offence that they had committed. The killing of the deceased was not worth the love they were fighting over as killing someone had serious consequences.
21. Having considered the facts of this case and the 1<sup>st</sup> and 3<sup>rd</sup> Accused persons' mitigation and weighed against the death sentence that was prescribed for the offence of murder under Section 204 of the *Penal Code*, this court came to the firm conclusion that a non-custodial sentence would be unjust as a life was lost in very unfortunate circumstances. Indeed, the Probation Office had found that the 1<sup>st</sup> and 3<sup>rd</sup> Accused persons were unsuitable for a non-custodial sentence. It was the considered view that a sentence of fifteen (15) years imprisonment would be suitable and adequate herein.



22. Going further, this court was mandated to consider the period the 1<sup>st</sup> and 3<sup>rd</sup> Accused persons spent in remand while their trial was on going in line with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).
23. 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 *Abamad Abolfathi Mohammed & another v Republic* [2018] eKLR.
39. The 1<sup>st</sup> and 3<sup>rd</sup> Accused persons were arrested on 20<sup>th</sup> January 2014 and arraigned in court on 27<sup>th</sup> January 2014. The 1<sup>st</sup> Accused person was released on bond on 5<sup>th</sup> January 2016 while the 3<sup>rd</sup> Accused person was released on bond on 29<sup>th</sup> June 2020. They were convicted on 27<sup>th</sup> January 2025 and from that time, they had remained in custody. The time they remained in custody therefore ought to be taken into consideration while computing their sentence.

### **Disposition**

40. Accordingly, having convicted the 1<sup>st</sup> and 3<sup>rd</sup> Accused persons of the offence of murder contrary to Section 203 as read with 204 of the *Penal Code*, they are each hereby sentenced to fifteen (15) years imprisonment which will run from today.
41. For the avoidance of doubt, the period the 1<sup>st</sup> Accused person spent in custody between 20<sup>th</sup> January 2014 and 4<sup>th</sup> January 2016 and from 27<sup>th</sup> January 2025 and 28<sup>th</sup> May 2025 be and are hereby taken into account while computing their sentence in line with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).
42. In addition, the period the 3<sup>rd</sup> Accused person spent in custody between 3<sup>rd</sup> between 20<sup>th</sup> January 2014 and 28<sup>th</sup> June 2020 from 27<sup>th</sup> January 2025 and 28<sup>th</sup> May 2025 be and are hereby taken into account while computing their sentence in line with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).
43. It is so ordered.

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



**J. KAMAU**  
**JUDGE**

