



**Republic v Lidede (Criminal Case E010 of 2024)
[2025] KEHC 7095 (KLR) (27 May 2025) (Sentence)**

Neutral citation: [2025] KEHC 7095 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E010 OF 2024**

**JN KAMAU, J
MAY 27, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPH AGENGO LIDEDE 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 18th 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 15th June 2024, at about 1500 hours, David Osotsi Lidede (hereinafter referred to as the “deceased”) arrived home while drunk and picked up a quarrel with his mother, Veronica Muhonja and sister, Beatrice Muhonja whom he felt should move in with the father of her children.
3. The Accused person, brother to the deceased, arrived and tried stopping the deceased from insulting their sister but the deceased advanced towards him but the Accused person pushed him back. The deceased then picked a jembe and aimed at the Accused person who managed to evade it and fell down. The Accused person then picked the jembe and they engaged in a fight whereby the deceased tried strangling the Accused person. The Accused person overpowered him and cut him several times on the head with the jembe. They then separated and the Accused person left for his house while the deceased went to the sitting room of his mother’s house and slept.
4. In the morning of 16th June 2024, at about 0400 hours, their mother went to check on the deceased and found that he was dead. She informed the area Assistant Chief who in turn informed the police.



5. The Police visited the scene, arrested the Accused person who was within the homestead. They recovered the jembe, removed the body of the deceased to Vihiga County Referral Hospital and commenced investigations.
6. A postmortem examination on the body of the deceased was carried out on 2nd July 2024. The Pathologist formed the opinion that the cause of the deceased's death was multiple injuries (polytrauma) secondary to mixed force trauma following assault. The Postmortem Report dated 2nd July 2024 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 Accused person proposed that he serves a sentence of five (5) years while the Prosecution recommended a sentence of ten (10) years imprisonment.
9. In his mitigation, the Accused person pointed out that he was remorseful and regretted that the issue occurred as a result of anger as he was separating the deceased who was intoxicated from fighting their sister. He said that he took the jembe from the deceased and retaliated after the deceased hit him.
10. He asserted that it was a taboo for siblings to kill each other especially in ancestral land and as a result the entire family had to relocate to Eregi where they have constructed for him a house. He further averred that his family and community had sought that he be given another opportunity to reform and be reintegrated at Eregi.
11. He said that he had been rehabilitated and no longer used drugs. He added that he also had four (4) children who relied on him and pointed out that he had had mental issues which had seen him admitted at Mathare Mental Hospital. He urged this court to mete out to him a non-custodial sentence.
12. On its part, the Prosecution submitted that someone lost a life due to anger issues. It pointed out that the Accused person had also been convicted for cutting trees and was fined Kshs 20,000/= or in default to serve four (4) months imprisonment. It urged this court to consider the Pre-Sentence Report but left the sentencing to the discretion of this court.
13. According to the Pre-Sentence Report of J. Sahani, Probation Officer, Vihiga County that was dated 14th March 2025 and filed on 25th March 2025, the Accused person was fifty-three (53) years old. He attended Hambale Primary School and was then transferred to Endere Primary School where he completed Class eight (8) in 1993. He opted not to continue with his education and opened a small kiosk. He also engaged in cattle, sheep and firewood trade. He was married and was blessed with five (5) children and one (1) of whom was deceased. He later separated from his wife and his younger children went to live with their grandmother at Kegoye.
14. He was not of good health as he had complained of persistent spinal pain for three (3) years which had affected his overall wellbeing. He did not abuse drugs but had a criminal history with two (2) prior convictions whereby one of which led to his imprisonment. He admitted to having committed the offence but stated that the events leading to the deceased's death were not premeditated.
15. His family pointed out that the deceased and the Accused person were brothers but that the deceased was a troublesome individual particularly when under the influence of alcohol. They explained that on the day of the incident, the deceased was drunk which they believed contributed to the escalation of the conflict which no one was able to intervene and/or stop.
16. They acknowledged that the act the Accused person committed was a taboo in their culture and carried significant consequences. They therefore stated that although it would be difficult for them, it was best



- that he was given a custodial sentence as the family works out where he would be re-integrated after his release.
17. The Local Administration and the community reported that Accused person was a disruptive individual who caused disturbances within the community. The Assistant Area Chief stated that the Accused person would always pretend to be mentally ill whenever he was caught in wrong doing. He added that the Accused person abused drugs and that at one time, he was involved in a case of creating disturbance and malicious damage to property. They proposed that he be incarcerated for the offence before being re-integrated into the community at Eregi where his family was relocating after this incident as his actions were considered a taboo.
 18. The Probation Office observed that the mental challenges that he faced was due to abusing drugs. It added that the Local Administration were of the view that he was using his mental condition to manipulate situations to his advantage. It found him unfit for community rehabilitation as he had been involved in community disputes and had a history of criminal convictions and further because his family was in the process of relocating to Eregi making re-integration to the community a challenge.
 19. 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.
 20. 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.
 21. 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.
 22. 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.
 23. It was clear from the facts of the case and the Pre-Sentence Report that he killed the deceased. The deceased who was his brother. Although the deceased attacked him first, he ought not to have cut him on the head several times. This was not to restrain him from insulting their sister but was intended to cause him harm. The extreme anger was not worth the trouble. Even so, this court noted that although the Accused person was said to be disruptive and had previous convictions, the deceased was the aggressor at the material time as the Accused person intervened to stop the deceased from insulting their sister.
 24. 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 eight (8) 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.



25. 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).
26. 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).
27. 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.”
28. 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.
29. The Accused person was first arraigned in court on 3rd July 2024. His application for bond was declined. He was convicted on 18th February 2025. This was a period that therefore ought to be taken into consideration while computing his sentence.

Disposition

30. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to eight (8) years imprisonment to run from the date of this Sentence.
31. For the avoidance of doubt, the period between when he was arraigned in court on 3rd July 2024 and 26th May 2025 before he was sentenced 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).
32. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 27TH DAY OF MAY 2025

J. KAMAU

JUDGE

