



**Prosecution v Kilonzo (Criminal Case 54 of 2023)
[2025] KEHC 9311 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9311 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 54 OF 2023**

**DR KAVEDZA, J
JUNE 30, 2025**

BETWEEN

PROSECUTION REPUBLIC

AND

ERICK MUMO KILONZO ACCUSED

JUDGMENT

1. The accused person (now convict) Erick Mumo Kilonzo was 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 particulars are that on 6th February, 2023 at Kibera, Kilimani sub-county within Nairobi County murdered Peter Nyagaka Momanyi.
2. However, following successful plea bargaining with the prosecution, the accused (convict) pleaded to a lesser charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The particulars are that on 6th February, 2023 at Upendo bar in Kibera area within Kibera Kilimani subcounty within Nairobi County he unlawfully killed Peter Nyagaka Momanyi.
3. The brief facts of the prosecution case are that the accused and the deceased were friends and lived together in a backroom at Upendo Bar. On 6th February 2023, Elizabeth, the owner of the bar and sister to the deceased, received a call from the accused telling her to rush to the bar due to an emergency, but he did not disclose its nature. She immediately called her sister, Sarah Moraa, who resides in Kibera, to proceed there.
4. Sarah called the accused, who claimed that someone had brought cannabis into the bar, which had caused problems. Sarah went straight to the bar and found the door closed. She forced the door open but did not find the accused inside. She opened the adjacent room, which the accused shared with the deceased, and found the deceased lying awkwardly with his legs on a plywood board, in a kneeling



position. As she looked closer, the accused grabbed her. She ran out and raised an alarm. A neighbour, Mona, rushed in and found both the accused and the deceased inside.

5. Mona informed Sarah that her brother was unresponsive. Sarah then called her sisters Elizabeth and Prisca, who joined her at the scene. On entering the room, they found their brother's neck twisted and bleeding from the mouth. Attempts to move the neck revealed it was already stiff. The accused sat on the bed throughout.
6. The police were notified and attended the scene, re-arresting the accused from members of the public. On interrogation, he admitted that he and the deceased had been smoking cannabis and that he had killed him. The officers noted signs of a struggle, with items scattered about. Fourteen photographs were taken and produced as exhibit 1(a), with a certificate of authenticity as exhibit 1(b). The body was preserved at City Mortuary. A post-mortem examination dated 8th February 2023 confirmed that the cause of death was manual strangulation, and the report was produced as exhibit 3.
7. A government analyst's report dated 16th February 2023 confirmed that the bloodstains on the deceased's clothes matched his DNA. The clothes and report were produced as exhibits 3(a), (b) and (c). A psychiatric report confirmed that the accused was fit to plead.
8. I informed the accused of his constitutional rights, which he confirmed he understood. He admitted that the facts were correct and that he had entered into plea negotiations voluntarily. The plea agreement was accepted, and he was duly convicted.
9. In mitigation, counsel for the convict, Ms. Nyamwongo, pleaded for leniency. She noted that the convict is a young man of 22 years. She submitted that both the deceased and the convict were intoxicated and had used cannabis. She further submitted that a fight broke out between the two and that the convict did not flee but instead informed the employer. She urged the court to be lenient and to consider the period already spent in custody.
10. Counsel added that the convict is remorseful and has benefited from rehabilitation while in prison.
11. The victim's family, through Elizabeth, stated that they remain deeply traumatised. The probation officer, in the pre-sentence report, confirmed that the convict has a stable home at his mother's residence. However, the officer concluded that a non-custodial sentence would be inappropriate given that the victim's family is still grieving.
12. The penal section for the offence of manslaughter is contained in section 205 of the *Penal Code* which provides: -
Any person who commits the felony of manslaughter is liable to imprisonment for life.
13. The court of Appeal in *Thomas Mwambu Wenyi v Republic* (2017) eKLR cited the decision of the Supreme Court of India in *Alistar Anthony Pereira v State of Maharesbtra* at paragraph 70-71 where the court held as follows on sentencing

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. the courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the court must keep in mind the gravity of the crime, motive for the crime nature of the offence and all other attendance circumstances. The principle of



proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence, As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including Social interest and consciousness of the society for award of appropriate sentence"

14. I have carefully considered the pre-sentence report alongside the facts set out in the plea agreement. It remains unclear what could have driven the convict to strangle his friend. The probation report indicates that the convict and the deceased argued over Kshs. 1,000, which the deceased's sister had given him for medical treatment.
15. The pertinent question is why the convict chose to dispute the use of money that was not his. He has expressly admitted that the funds belonged to the deceased and that the disagreement concerned how they ought to be used. The convict proceeded to fight with the deceased, overpowered him, and strangled him. The deceased was found in a kneeling position, which suggests a posture of surrender. The convict has further admitted to being under the influence of alcohol and cannabis (bhang), which may have impaired his judgement.
16. The pre-sentence report confirms that the convict has no prior convictions and is otherwise of good standing within the community. Nonetheless, I am not persuaded that the period already spent in custody suffices for meaningful rehabilitation. The convict must learn to live free from alcohol and drugs. There has also been no expression of apology from his family to that of the deceased.
17. In the circumstances, I find that a custodial sentence is warranted, both to reflect the gravity of the offence and to allow the convict adequate time for rehabilitation. The loss of life over such a trifling sum is deeply troubling and must be met with a sentence that upholds the sanctity of life and deters similar conduct.
18. I have taken into account the convict's plea of guilty, lack of previous convictions, and his young age. I have also considered the impact on the family of the deceased, who have suffered an irreparable loss for which no sentence can atone.
19. I would have sentenced the convict to death but in view of the fact that he has saved this courts time by plea bargaining, he is entitled to an incentive.
20. I hereby sentence the convict Erick Mumo Kilonzo to serve fifteen (15) years imprisonment.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED THIS 30TH DAY OF JUNE 2025

D. KAVEDZA

JUDGE

In the presence of:

Ms. Nyamongo for the Accused

Accused Present

Ms. Timoi for the Prosecution

Tonny Court Assistant

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