



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Republic v Ingati (Criminal Case E009 of 2023)  
[2024] KEHC 718 (KLR) (31 January 2024) (Sentence)**

Neutral citation: [2024] KEHC 718 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE E009 OF 2023  
JN KAMAU, J  
JANUARY 31, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**CLYDE INGATI ..... ACCUSED**

**SENTENCE**

1. The accused person 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 agreement on November 23, 2023 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 are that Saul Ambunyolo (the deceased), Clyde Ingati (the accused) and others were at a chang'aa den within Munungo Village on June 22, 2023 at around 8.30pm where people were drinking chang'aa and gambling. The deceased and the accused person started arguing after the deceased refused to pay him Kes 100/= which he won in a gamble.
3. The deceased then held the accused person on the neck and the accused person retaliated by heading him. The accused person sensed danger and removed a screw driver which he had used earlier to fix electricity and stabbed the accused person the left part of his chest. The deceased fell on the ground while bleeding. The deceased was rushed to Kima Mission Hospital where he was pronounced dead as the doctor's effort to resuscitate him failed.
4. A postmortem was carried out on June 26, 2023 where the cause of death was established as a stab wound on the chest. The accused person was arrested and detained at Luanda police station. He was then charged with the offence that is before court. The postmortem report dated June 26, 2023 was produced as an exhibit in this court and marked as exhibit 1.



5. Having entered into a plea agreement, the accused person urged this court to sentence him to five (5) years imprisonment. On its part, the state recommended a sentence of ten (10) years imprisonment.
6. In his mitigation, he told this court that he was a first time offender. He added that he was a family man and sole provider for his young family. He pointed out that he was provoked in committing the offence and was acting in self-defence but was remorseful.
7. He also contended that he had been in custody since June 23, 2023 and as it was normal for people to stay away from an accused person as had been stated in the pre-sentence report, he averred that five (5) years would be sufficient for the people to heal and for them to accept him back.
8. On its part, the prosecution relied on the pre-sentence report and the plea agreement and urged this court to sentence him to ten (10) years imprisonment.
9. According to the pre-sentence report of Benard Mwembe, probation officer, Vihiga County that was dated January 23, 2024 and filed on January 25, 2024, the accused person was aged thirty four (34) years. He pursued formal education up to class eight (8) and attained 272 out of 500 marks in his Kenya Certificate of Primary Education (KCPE). He proceeded to vocational training for two (2) years and attained grade III. He was married and was blessed with three (3) children. He earned a living as an electrician.
10. He was a christian but rarely attended church. He abused drugs such as kuber, cigarretes, bhang and alcohol which had negatively affected his behavior and as a result he became a threat to his mother and siblings. He was a HIV/AIDS patient and was on drugs. He had a previous conviction of possession of bhang for which he served one month CSO at Irimbi police post in February (2023) and completed satisfactorily.
11. He admitted to the facts of the case and was remorseful of the events that led to the offence. He prayed for leniency. He was also very sorry for the victim's family trauma and begged for their forgiveness.
12. His family described him as a rude person who was very rough and could not be restrained whenever he started a fight or fracas. They pointed out that his involvement in violent activities had ruined his reputation and embarrassed them. They had suffered in the hands of the community because of him and his house was razed down by the public after the incident. They did not want to be associated with him and felt that he should carry his own cross. It was their assessment that he did not deserve leniency, a second chance and/or a non-custodial sentence.
13. The victim's mother was bitter given that she was elderly and a widow and the fact that she had depended on the deceased for a living. She pointed out that she is straining in educating the children of the deceased. According to her, the accused person's action was therefore unforgivable and that a stern action should be taken against him for his violent behavior. She opined that the accused person be given a jail term as a way of redeeming the general public from the jaws of his reckless conduct.
14. The community also viewed him as a very violent person who had a penchant for creating disturbance of peace. Dafurosa Odinga, village elder, Emuhaya described him as a difficult person and a trouble maker who involved in social vices. She was opposed to his release on a lenient sentence basis.
15. According to the chief and the assistant chief, the accused person was a bad person in the society and was linked to several social ills such as the abuse of alcohol and substances in the community. He had a history of organising violence and that this matter at hand was not his first involvement in a murder case as he was a suspect in another murder case but was luckily let off the hook when the case was dismissed due to failure of witnesses. They pointed out that he was badly beaten by members of the public after



the incident subject of this case and he narrowly escaped death due to the timely intervention of the law enforcers.

16. It was their conclusion that the community saw the accused person as a threat to public safety and regarded his incarceration as the most desired outcome of the case.
17. 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.
18. This court looked at the post-mortem report and noted that the cause of the deceased's death was a stab wound to the chest. There was an altercation between the deceased and the accused person. The accused acted swiftly to defend himself from the deceased who had held him by the neck. The killing did not therefore appear to have been pre-meditated but was committed at the spur of the moment. However, he used excessive force against the deceased which was not warranted.
19. Although the accused person was remorseful and was a first time offender with no previous records and with a young family and was sickly, the probation office did not recommend a non-custodial sentence. This court agreed with its recommendation.
20. Killing someone is an abomination in the society and that explains why the accused person'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.
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. Having considered the facts of this case and the accused person's mitigation, this court came to the firm conclusion that a sentence of eight (8) years imprisonment would be suitable and adequate herein.

### **Disposition**

24. Accordingly, it is hereby directed that the accused person be and is hereby sentenced to eight (8) years imprisonment to run from today. The period between June 23, 2023 when he was arrested and January 30, 2024 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).
25. Orders accordingly.

**DATED AND DELIVERED AT VIHIGA THIS 31<sup>ST</sup> DAY OF JANUARY 2024**

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

