



**Republic v Agesa (Criminal Case 25 of 2021)  
[2024] KEHC 620 (KLR) (30 January 2024) (Sentence)**

Neutral citation: [2024] KEHC 620 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE 25 OF 2021**

**JN KAMAU, J  
JANUARY 30, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**RODGERS AGESA ..... 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 21<sup>st</sup> November 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 on 20<sup>th</sup> March 2016 at around 7.30pm, Henry Mwanguedi (the deceased) visited his lady friend Jennifer Maizi within Budaywa village. Rodgers Agesa (the Accused person) became rowdy by shouting at her saying that he would do something that had not been done. The Accused person then met the deceased within Jennifer’s compound. Neighbours then heard some sound as if something was being beaten.
3. One Collince went to see what was being beaten and found the deceased lying down as the Accused person continued beating him with a rungu. The Accused person then piled some firewood and dry leaves and set the deceased on fire. The said Jennifer Maizi then heard the Accused person say that he had killed someone and she should see.
4. The Assistant Chief called the OCS who came with the DCIO Sabatia Division. They arrested the Accused person and detained him at Mudete police station. The deceased’s body was taken to Vihiga County Hospital Mortuary.
5. A Postmortem was carried out on 24<sup>th</sup> March 2016. The cause of death was determined to have been severe burns.



6. After investigations were carried out, the Accused person was charged with the offence before court. The Postmortem Report dated 24<sup>th</sup> March 2016 was produced as evidence in this court and marked as PEXH 1.
7. Having entered into a Plea Agreement, the Accused person urged this court to sentence him to ten (10) years imprisonment. On its part, the State recommended a sentence of twelve (12) years imprisonment.
8. In his mitigation, the Accused person said that he was remorseful of his deeds. He said that he had had enough time to reflect on what happened while in custody. He stated that he had decided to live a purposeful life.
9. He asserted that at the time of committing the offence, he was only craving for his mother's love and the victim had come into their family and denied him his mother's love. He deeply regretted the anger that caused the unfortunate incident.
10. He pointed out that he had been in custody for almost seven (7) years since 21<sup>st</sup> March 2016 during which time he had lost the pride of his youth. He added that during that time, he had not smoked bhang. He prayed for a lenient sentence.
11. According to the Pre-Sentence Report of Benard W. Mwembe, Probation Officer, Vihiga County that was dated 11<sup>th</sup> January 2024 and filed on 12<sup>th</sup> January 2024, the Accused person was aged twenty eight (28) years. He dropped out of school in class five (5) after his father died.
12. Prior to the incident, he earned a living as a hired farm labourer and splitting of firewood. He was constantly of ill health, was on drugs and had mental problems. He did not seem remorseful for having committed the offence but sought leniency of the court.
13. His family viewed him as a very violent person who was quick tempered. He consumed drugs such as bhang and his bad conduct frustrated his relationship with his siblings who felt that he was a disgrace to the family. They did not want to be associated with his brutality and cruelty and generally felt that he should bear his own cross.
14. The community also viewed him as a very violent person who had a penchant for creating disturbance of peace. He was thus seen as a bad element and a trouble maker. Once intoxicated with bhang, he had a tendency of cutting people with pangas. There was a stream near his home where he could waylay, ambush and assault people.
15. The villagers had united against him as a common enemy and were not comfortable with him being released on a non-custodial sentence. They were apprehensive that he would cut another person if he was released. They also criticised his mother for starting an affair with the deceased soon after her late husband passed on when her children were still processing his death. It was their view that it was this psychological torture that provoked the Accused person to commit the offence.
16. 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.
17. In view of the negative Pre-Sentence Report, the Probation Officer did not recommend a non-custodial sentence. Although the Accused person had never been charged with any offence previously prior to the incident and the fact that he had sought leniency, it was clear that he was intentional about killing



the deceased. It was irrespective that he did not like the deceased. The nature of the injuries the deceased sustained showed the malice that the Accused person had and showed his intention of killing him. Notably, the deceased must have died a harrowing death as the Accused person burnt his body after hitting him with firewood on the head.

18. 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.
19. 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.
20. 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.
21. Having considered the facts of this case and the Accused person's mitigation, this court came to the firm conclusion that a sentence of twelve (12) years imprisonment would be suitable and adequate herein.

### **Disposition**

22. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to twelve (12) years imprisonment to run from today. The period from when he was first arraigned in court on 30<sup>th</sup> March 2016 and 29<sup>th</sup> January 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).
23. Orders accordingly.

**DATED AND DELIVERED AT VIHIGA THIS 30<sup>TH</sup> DAY OF JANUARY 2024**

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

