



**Republic v Ambani (Criminal Case 45 of 2021)  
[2024] KEHC 2027 (KLR) (29 February 2024) (Sentence)**

Neutral citation: [2024] KEHC 2027 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE 45 OF 2021  
JN KAMAU, J  
FEBRUARY 29, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOSPHAT KHASI AMBANI ..... 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). The matter proceeded for hearing on 2<sup>nd</sup> November 2023 when Dr David Akaliche Adori (hereinafter referred to as “PW 1”) and Everline Mwanzo Isalano (hereinafter referred to as “PW 2”) testified. On the said date, the parties informed this court that there was a possibility of the Accused person entering into a Plea Agreement. The court directed that the matter would proceed for hearing on 6<sup>th</sup> November 2023 in the event they were no possibilities of plea bargaining.
2. On the said 6<sup>th</sup> November 2023, the parties informed this court that they had agreed on the plea bargain. As a Plea Agreement could be entered at any time before the Prosecution closed its case, this court therefore fixed the Plea Bargain Agreement proceedings on 5<sup>th</sup> February 2024.
3. On 5<sup>th</sup> February 2024, the Accused person entered into a Plea Agreement whereupon this court convicted him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.
4. The facts of the case are that on the night of 5<sup>th</sup> January 2020 at about 7.30 pm, the Accused person picked a quarrel with Loise Limonyero Munzieku (the deceased) who was in her home. The deceased was his sister-in-law and they both resided in the same ancestral land but in different homesteads in Wanalo Village in Shamakhokho Location.



5. The quarrel was about family land which belonged to her husband that she had leased out to an outsider. Her husband had been in Mombasa for a period of four (4) years leaving her as a sole bread winner. This is what prompted her to lease out the land.
6. As they were still quarrelling, the Accused person rushed to his house, armed himself with a panga, came and cut her on the forehead and hand. He also cut PW 2 with a panga as a result of which she sustained an injury on her hand. The deceased was rushed to Jumuia Hospital at Kaimosi where she succumbed to death while undergoing treatment.
7. The Postmortem examination was carried out on 11<sup>th</sup> January 2020. The cause of death was established to have been excessive blood loss (hemorrhagic) shock following assault. The Postmortem Report dated 11<sup>th</sup> January 2020 was tendered in evidence by PW 1 and was marked Exhibit 1.
8. Having entered into a Plea Agreement, the Accused person urged this court to sentence him to seven (7) years imprisonment. On its part, the Prosecution recommended a sentence of fifteen (15) years imprisonment.
9. In his mitigation, the Accused person submitted that the deceased provoked him and that he only acted in his defence. He pointed out that he had no intention of killing her. He was remorseful about his actions as it affected his own family. He pointed out that he had already served four (4) years in remand as he was arrested on 6<sup>th</sup> January 2020 and arraigned in court on 15<sup>th</sup> January 2020. He prayed for leniency and urged this court to take into account the period he had spent in remand while meting out his sentence.
10. On its part, the Prosecution submitted that the offence of murder was rampant in the area and urged the court to mete out a deterrent sentence against him. It asserted that the deceased's family was still bitter as they lost their loved one. It further contended that the Accused person was the deceased's in-law and he ought to have protected her together with her children in the absence of her husband.
11. It urged the court to mete out a sentence of fifteen (15) years imprisonment which was inclusive of the four (4) years that he spent in remand in line with Section 333(2) of the *Criminal Procedure Code*.
12. According to the Pre-Sentence Report of Benard Musitia, Probation Officer Vihiga that was dated and filed on 2<sup>nd</sup> February 2024, the Accused person was aged fifty (50) years. He dropped out of school after sitting for his Kenya Certificate of Primary Education (KCPE) examination at Lusui Primary School due to lack of school fees. Thereafter, he started engaging in casual labour to earn a living.
13. He married and separated twice and was blessed with two (2) children. Prior to his arrest he engaged in alcohol consumption as a past time activity.
14. He asserted that he did not intend to kill the victim and that he only acted in self-defense, a fact that his family and that of the victim differed with. Their version was that he had developed interest in one of deceased's daughter which was an abomination culturally and when he was confronted, he threw tantrums and ended up killing the deceased.
15. He prayed for a non-custodial sentence to enable him take care of his family. He also indicated that he was willing to fully abide by the cultural and community rules if allowed to integrate back to the society.
16. His father did not want to be associated with him as he committed an atrocity to the family by killing a family member. He pointed out that the Accused person's house was torched after the incident. He asserted that he was threatened because of the offence and was apprehensive that if the Accused person



- was seen in the community, he would be killed and the family ex-communicated from the community. His family did not want anything to do with him and did not therefore vouch for his release.
17. The secondary victims decried the deceased's death. They were resentful and explained that they lost their kin who was helpful and the unifying person in the family. They asserted that her daughter was unable to join secondary school because of lack of school fees and that her husband fled from home due to distress that was caused by the incident. They averred that the family had disintegrated due to her death.
  18. The Area Chief and other local administrators condemned the act the Accused person committed. The Chief described him as a person who was stubborn who had been selling and abusing drugs. The community viewed him as a very violent person who had a penchant for creating disturbance of peace. They had threatened to lynch him if he was seen in the community.
  19. In view of the negative Pre-Sentence Report, the Probation Officer did not recommend a non-custodial sentence.
  20. 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.
  21. It was 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.
  22. The sentence also had to be one that was hinged on retributive justice for the secondary victims.
  23. 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.
  24. Although the Accused person had sought leniency, it was clear that he killed the deceased who was his sister-in-law without any provocation. The nature of the injuries she sustained showed the malice that he had against her and showed his intention of killing her. This case bordered more to murder than manslaughter.
  25. Killing of a family member is an abomination in the society. That could explain 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.
  26. Having considered the facts of this case and his mitigation, this court came to the firm conclusion that a sentence of eighteen (18) years would be suitable and adequate herein.

## **Disposition**

27. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to eighteen (18) years imprisonment to run from today. The period he spent in custody from when he was arrested on 6<sup>th</sup> January 2020 to 28<sup>th</sup> February 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).
28. Orders accordingly.



**DATED AND DELIVERED AT VIHIGA THIS 29<sup>TH</sup> DAY OF FEBRUARY 2024**

**J. KAMAU**

**JUDGE**

