



REPUBLIC OF KENYA



KENYA LAW
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**Republic v AMK (Criminal Case E007 of 2023)
[2024] KEHC 17216 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 17216 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE E007 OF 2023**

TM MATHEKA, J

JULY 26, 2024

BETWEEN

THE REPUBLIC PROSECUTOR

AND

AMK ACCUSED

JUDGMENT

1. AMK is charged with murder contrary to section 203 as read with 204 of the *Penal Code*. The particulars are that on 21/4/2023 at [particulars withheld] village, [particulars withheld] sub-location [particulars withheld] location, [particulars withheld] sub-county within Makueni County he murdered ZP. He pleaded not guilty on 24/5/2023.
2. Vide a plea bargain agreement dated 4/6/2024 – the accused person and the DPP agreed to a reduction of the charge from murder to manslaughter contrary to section 202 as read with section 205 of the *Penal code* – where on the same particulars he was charged with causing the unlawful death of ZP.
3. On 12/6/2024 upon satisfying myself as required by section 137F(1) of the *Criminal Procedure Code* that the accused person understood the purport of the plea agreement, he took plea and the charge of manslaughter c/s 202 as read with 205 of the *Penal Code* was read to him .
4. The accused pleaded guilty to the charge.
5. Pursuant to section 137F(2) the prosecutor laid out the facts as follows:
6. That: sometimes back in the month of January 2023 the deceased minor, ZP was left by her mother one CN under the care of her father one AMK (accused) after they separated. The mother went to work at a certain bar and restaurant at [particulars withheld] in Mombasa. The child used to sleep at her cousin’s GMW aged 16 years alias K during weekends and holidays, but during the school days the child would sleep in her father’s house so that he would assist her in the morning to get ready for school.



7. On 21st April 2023 at around 0730 hrs the child woke up from her cousin's house as usual and went to play with the other children while G went to fetch water from a nearby stream. Later she returned and started washing utensils while the deceased continued playing outside.
8. After about one hour the accused went and took the child and they proceeded towards [particulars withheld] market. At around 1200 hours they returned back home. While at home the child joined some other children who were hunting termites, among them was G, EMM and SMM. They were hunting and eating termites known in Kikamba as '*ngai*'. As they continued eating '*ngai*' the accused called the child three times. The child did not respond.
9. Apparently the accused was offended and while carrying a stick in his hand, he went to where the children were. Immediately the child saw her father approaching them, she ran and hid herself behind S. The accused approached her and started canning all over the body with the stick.
10. The child fell down on her back on the ground crying.
11. The accused went and picked her from the ground and continued canning her. She slipped and fell on the lower terrain and causing her to roll down still while crying.
12. The accused picked her up again and continued canning her as he tried to steer her towards the house. The child slipped and fell in a trench where she hit her head on the stones which were on the ground and immediately stopped crying and stopped moving.
13. The accused tried calling her, she did not respond. He carried her deceased from where she was lying and placed her on grass next to his house where he tried to give first aid, but all in vain. After some minutes he carried her into his house and called G who went to the accused house and found the child laid on the chair unconscious. The accused sent her to go and call a nurse who operates a clinic a Mitini market but the said nurse was not available. Again the said accused person sent to call one Irene Katoto Makau and both proceeded back to the accused house.
14. On arrival at the said house Irene looked at the condition of the child and found her to be unconscious where she decided to call a boda boda rider to take the child to hospital. G carried the child who was still breathing and took her up to the road, on reaching there the accused took the child and boarded a motor cycle while holding the child as they proceeded to Kilungu sub-county hospital.
15. At the hospital the child was pronounced dead on arrival.
16. Investigations were commenced and several witnesses recorded their statements.
17. On 22nd April 2023 the accused was arrested and placed in police custody.
18. On 24th April 2023 a post-mortem was conducted and it was established that the deceased died as a result of having been hit on the head with a blunt object.
19. Later the accused was arraigned in court and charged with the offence of murder which was reduced to manslaughter via the plea bargain agreement.
20. Accused pleaded guilty to the facts and was convicted on his own plea of guilt.
21. The only issue for determination is what is the appropriate sentence.
22. A pre-sentence report was filed by Probation and After Care Services on 15/7/2024.
23. From the report it is confirmed that the accused was the biological father of ZP. He had co-habited with the mother since 2014 and they had the child.



24. I did not see any view by the accused in the report and his counsel appears to have opted to rely on the report.
25. I have noted that the accused seeks a non-custodial sentence while the State proposed five years imprisonment.
26. I have carefully considered the report. It speaks a lot about the accused's violent past and the fact that that has not endeared him to his family.
27. There is no evidence of remorse for what happened, but his actions immediately the child fell and stopped crying and moving indicate a concern to do something about it.
28. That said, the facts of the case reveal a very angry parent – who mercilessly beat his four year old daughter for simply not responding to his calls. The reason she did not respond is because she was doing what children do, playing with other children. In this case they was the additional fun of hunting and eating those flying termites.
29. The facts indicate that when she saw him, she ran and hid behind one of her playmates, a sign that she on seeing him armed with a stick she knew what was coming and may have had lots of fear for her father.
30. The facts as admitted are that he beat her with a stick all over her body, she fell down crying. He did not stop – he picked her up and beat her up again – she fell down crying. He did not stop he picked her up and beat her up again – she fell again crying and rolling on the ground. He was not satisfied. He picked her and continued beating her steering her towards home and this time she fell into a trench hitting her head on the stones that were there.
31. The postmortem report shows blood was found on both nostrils and ears, several puncture marks on the back, broken perforated hymen, massive subdural hematoma on the right parietal lobe and that the cause of death was severe head injury secondary to blunt trauma.
32. Evidently, the accused was exercising the parental rights to discipline the child for disobedience – but the amount of violence meted on the child was beyond any reasonable punishment for a 4 year old whose offence was failing to respond to her father's call – because she was doing what children do – play. There are so many different ways he could have responded other than beating her mercilessly.
33. I have anxiously considered these circumstances and what could have driven the accused to punish the child so severely.
34. The facts say that the child hit her head on some stones but they also say that the accused beat her with a stick all over the body – and the possibility of one of those blows landing on her head is not farfetched.
35. Despite the pre-sentence report – against the accused person – these facts speak for themselves and without even considering the report – the accused cannot have had a good reason to beat a four year old so badly.
36. He must understand that at that time when he was hitting her all over with the cane, he was guilty of child abuse – long before he became guilty of killing the child. Such parenting styles as his are frowned upon by the law – no less than the Constitution which provides at Article 53(1) (d) that every child has the right

“to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment and punishment and hazardous or exploitative labour”.



37. This is the duty not of both parents whether married or not and in this case the child was in the care and custody of her father. A father is the protector of his daughters, a great contributor to their future realtaions with the rest of the world. That is what the experts tell us. For a four year old with an absent mother, the accused must have meant the whole world for his daughter. The kind of violence exhibited on this day, leaves one without words. A four- year-old was beaten to her death by her father for playing.
38. The accused person violated all these rights of this child: – abused the child physically, inflicted violence – physical and psychological, and meted out inhuman treatment and punishment as no human being and in particular of 4-year-old should be exposed to such punishment – her only defence being to fall down and roll away – only to be picked and beaten some more.
39. In the circumstance does the accused deserve a non-custodial sentence? These facts make that untenable. Despite the mother’s view that whether or not the accused was sentenced to life – it would not bring back her child.
40. Violence against children is something that should jolt us to collective action like the irritating scratch sounds that make us cover our ears or grit our teeth. We cannot afford to normalize any kind of violence against children, whether by parents or state agents. It must be a no.
41. No one should get away with violent acts against children. The Children Act, our own Constitution hold each one of us to account. That is why I must state that accused deserves a sentence that will also send a message that a parent’s right to punish their child ends where the punishment violates Article 53(1) (d) if the Constitution.
42. Adults who violate the law can nolonger be subjected to corporal punishment. That form of punishment was removed from our Penal Code for persons found guilty of criminal offences.
43. Children who are in conflict with the law are not liable to physical punishment as the Children Act outlaws corporal punishment.
44. Why would a 4-year-old child whose ‘offence’ was playing be liable to such extreme corporal punishment at the hands of the father?
45. It is my view considered view that a non-custodial sentence would not suffice.
46. A person found guilty of manslaughter is liable to imprisonment for life. There are decisions where courts have determined this to be somewhere from 40 years imprisonment.
47. Taking into consideration that the accused is a first offender, that he took a plea agreement and accepted responsibility for what he did. And these authorities and the Sentencing Policy guidelines, the nature of the offence, the manner in which it was committed victim involved, the need to send a message against violence against children, the accused is sentenced to 10 years’ imprisonment with effect from 9/5/2023.

DATED, SIGNED AND DELIVERED THIS 26TH JULY 2024

MUMBUA T MATHEKA

JUDGE

