



**Republic v Ingafu (Criminal Case 12 of 2023)
[2024] KEHC 13427 (KLR) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13427 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 12 OF 2023
DR KAVEDZA, J
OCTOBER 31, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

FAITH INGAFU ACCUSED

JUDGMENT

1. The accused was charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code. Following the signing and filing of the plea-bargaining agreement, the accused person was taken through the plea bargain process by the court upon which the court was satisfied that he had voluntarily offered to plea bargain before accepting the plea bargain and that his right to fair trial as guaranteed under article 50(2) of the Constitution were not violated or threatened to be violated by the plea bargain agreement. The court then read out to the accused person the information for manslaughter and all the elements of the offence which she professed to understand and she admitted the charge of manslaughter, upon which a plea of guilty was entered against her.
2. The prosecution led by Ms Maina read out to court the facts of the case which facts and which the court was satisfied that they disclosed the offence charged and upon the court asking the accused whether the facts as read out to him were true or not true, the accused person admitted the facts to be true. She was then convicted on his own plea of guilty for the offence of manslaughter as charged.
3. The facts of the case are as follows: On 1st April 2023, police officers from Kabete Police Station received a report regarding the sudden death of Prince Moses Wekesa, aged one year and eight months, who was living with his parents in the Gathondeki area of Uthiru, Dagoretti Sub-County. Officers visited the scene and learned that the deceased had been rushed to Muthua Health Centre in Uthiru by his mother (the accused) and his father, Ben Wekesa. The mother claimed that the child had fainted after falling from the bed.



4. Eyewitness accounts from DW1 Gladys Njoki Kaari, DW2 Ann Anemba Odanga, DW3 Jennifer Akamram, and DW4 Norah Akiso Okoolo, all neighbours of the accused and Ben Wekesa, stated that the couple frequently argued due to accusations of infidelity against Ben Wekesa. DW5, Laurine Atieno Kwoba, a colleague of Ben Wekesa, confirmed the accused's suspicions of infidelity, stating that she and Ben were in an intimate relationship.
5. On 30th March 2023, the day before the child's death, the couple allegedly fought over the same infidelity accusations. The accused reportedly stayed home the following day along with Prince Moses, who was unwell and injured from the previous day's altercation. Around 9:00 PM, DW1 and DW2 overheard the accused beating the child, and efforts to persuade her to open the door were unsuccessful.
6. Eventually, the accused opened the door and asked DW1, Gladys Njoki Kaara, for assistance, claiming the child had fainted. They sought medical help together. In her confession, the accused admitted to the beating, which neighbours corroborated, attributing it to issues related to infidelity. She also confessed to having harboured suicidal thoughts that day and to initially attempting to suffocate her son with a pillow. Realising he was still alive, she sought help and brought him to Muthua dispensary.
7. The scene was processed by crime scene personnel, and the body was moved to Chiromo Hospital Mortuary. A post-mortem was conducted on 5th April 2023 at Chiromo Mortuary, which revealed that the child died of hypoxia due to pressure on the neck consistent with manual strangulation. On 13th June 2023, the accused was assessed at Mathari Mental and Referral Hospital and found fit to stand trial. The prosecution then stated that they had no previous record and therefore the accused should be treated as a first offender.
8. In mitigation, the accused contended that she became pregnant as a minor and dropped out of school, faced neglect and violence without intervention from family or community. She suffered continuous abuse from her husband due to infidelity, leading to depression, suicidal thoughts, and impaired mental health at the time of the offence. Despite these circumstances, that she had made significant progress, completing counselling and mental health treatment, and expresses a desire to reintegrate into society and resume her education.
9. Mr. Mulama for the prosecution submitted that this case as an instance of Battered Woman Syndrome and advocated for a non-custodial sentence, referencing similar cases where leniency was applied.
10. In the victim impact statements, her husband, Ben Wekesa, and the child's grandmother, Violet Kasandi, acknowledge past abuse and stated that they had forgiven the accused, with Kasandi noting her attempts to reconcile the couple. Both expressed sorrow over the child's loss but support the accused's rehabilitation.
11. I have considered the circumstances giving rise to this incident leading to the death of the deceased, I have also considered the mitigations by the accused and her counsel. The accused is a first offender and has saved the court's time by pleading to a lesser charge of Manslaughter.
12. I have considered her remorse and the fact that she was also a victim of domestic violence. I have heard the victim's father and grandmother who had forgiven the accused.
13. Yet life, sacred and inviolable, belongs to none but the law itself (see Article 26 of our Constitution). And here was a child, blameless and small, who should have known the warmth of protection, the shield of care. He should not have been swept from this earth by the hand of one meant to cradle him, especially not by his own mother.
14. Considering all the circumstances of this case, the mitigation and the Victim Impact Statement and probation report on record, the fact that the accused has saved the court's time and resources by



pleading guilty to the charge of Manslaughter, I exercise discretion and sentence the accused person Faith Ingafu to probation for a period of three (3) years. She is directed to report to Kibera Probation Office for further directions.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED THIS 31ST DAY OF OCTOBER 2024.

D. KAVEDZA

JUDGE

