



**Republic v Nthiwa alias Mpita (Criminal Case E004 of 2022)  
[2023] KEHC 978 (KLR) (Crim) (20 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 978 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E004 OF 2022  
DO OGEMBO, J  
FEBRUARY 20, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ANASTACIA NDUKU NTHIWA ALIAS MPITA ..... ACCUSED**

**RULING**

1. The accused was originally charged with the offence of murder contrary to section 203 as read with section 204 of the *penal code*. She has however plea bargained on the same and pleaded guilty to the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. upon her own plea of guilty on the same, she has accordingly been convicted.
2. The accused, through her learned counsel, has raised several mitigating factors, including;
  - i. That the accused is remorseful and pleads for mercy.
  - ii. That the incident occurred at a homestead set up as accused and the deceased were neighbours.
  - iii. That this was a case of intoxication and the accused could not make a proper judgment. That it was a simple quarrel that led to a fight and to the death of the deceased.
  - iv. That the accused, while in prison, has since changed her ways and has reached out to the family of the deceased for forgiveness.
  - v. That she has made a decision to quit alcohol.
  - vi. That her children are missing her parental love.



- vii. Lastly, that she has saved court's time through plea bargaining. She prays for mercy and a non-custodial sentence.
3. Mr. Adede, counsel for the family of the deceased, had the opportunity to address the court on the issue of sentence. Counsel noted that the position of the family remains as captured on the letter filed and dated 7.12.2022. I have perused letter. In the same, the family of the deceased expresses their disappointment towards the process of plea bargaining leading to the accused pleading to the lesser offence of manslaughter. Counsel referred the court to section 205 of the Penal Code that provides for life sentence for the offence of manslaughter which it was submitted would be appropriate in the circumstances.
4. The prosecution, through Ms. Njoroge, supported the submissions of counsel for the family of the deceased. Counsel noted that deceased was a young man with a long life ahead of him. That he was the only child of the family who remained devastated. That the accused abused chang'aa and deserves a custodial sentence that would make her take full responsibility for her actions.
5. Prior to the date set for the mitigation, this court ordered for and obtained a probation officers pre-sentence and victims impact assessment report. I have perused the same carefully. Of note from the report are the following:-
- i. A history of alcohol abuse and sale by the accused.
  - ii. That the victim dies young at 32 years of age.
  - iii. That the victim was the only child of his parents and was still single. The mother has remained traumatized by the death of the deceased.
  - iv. The desire of the family of the victim that the court metes out a deterrent custodial sentence, and are even opposed to the conviction on the offence of manslaughter.
  - v. The act of the accused of abandoning the injured deceased without any care leading to his death.
6. I have considered the mitigation raised by the accused and the responses from both the family of the deceased and the prosecution. By the reckless act of the accused a young life of the deceased was lost. Deceased was the sole child of his family and the trauma that his death has caused to his mother have been captured both by counsel representing the family and by the probation officer in the report filed.
7. In the circumstances, this court is convinced that the aggravating circumstances herein outweigh the mitigating circumstances that the defence side have raised. And that the accused deserved a deterrent custodial sentence that would be commensurate with the actions of the accused while at the same time give dignity to the lost soul. I accordingly therefore sentence the accused to serve 25 years imprisonment. This sentence shall run from 18.1.2022, the date when the accused was first arraigned in court and taking into account the fact that the accused has been remanded in custody pending determination of this case. Right of appeal 14 days.

**D. O. OGEMBO**

**JUDGE**

**20<sup>TH</sup> FEBRUARY, 2023**

Court:



Ruling read out in open court in the presence of the accused, Mr. Omenke for the accused, Mr. Adede for the family of the deceased, and Ms. Gikonyo for the state.

**D. O. OGEMBO**

**JUDGE**

**20<sup>TH</sup> FEBRUARY, 2023\***

