



**Republic v Nandwa (Criminal Case E025 of 2022)
[2023] KEHC 22974 (KLR) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22974 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E025 OF 2022
SC CHIRCHIR, J
SEPTEMBER 29, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

WYCLIFFE OTUNDO NANDWA ALIAS ABEDNEKO ACCUSED

RULING

1. The Accused was initially charged with murder, but later pleaded guilty to the lesser charge of manslaughter, following a plea bargain agreement. The particulars of the charge were that on the 10th day of June 2022, at Eshirobo village in Matioli sub-location of Kakamega central sub-county within Kakamega County Unlawfully killed Andrew Nandwa Ashiemi. The accused pleaded guilty to the charge aforesaid, and was convicted on his own plea.
2. The court deferred the sentencing and ordered for a pre-sentencing report.

The Presentencing Report

3. According to the presentencing the accused insists that he acted on self- defence ; that he had no intention of killing the Deceased, and he pleads for leniency. His family too prays for leniency. The victim’s family indicate that they convened a meeting, in which they resolved to forgive the accused. The community described the accused as a calm person, “but who can be very hostile when agitated”.

Accused’s Submission

4. Through his counsel, Ms. Masakwe, the accused submitted that he had no previous criminal record and that he is remorseful. He admits that he has since realized he used excessive force. He further submits that his relationship with his family, the community and the victim’s family is restored. He pleads for non-custodial sentence.



He further tells the court he has been in custody for the last 3 years and prays that the court takes into consideration that period in the event that he is given custodial sentence.

Prosecution's Submission

5. The prosecution submits that the offence was not committed at the spur of the moment as alleged, and that witnesses accounts show that members of the public had attempted to restrain him to no avail. The prosecution prays for a minimum sentencing of 10 years.

Determination

6. I have considered the parties' submissions and the presentencing report. I have taken note of the Accused's remorsefulness and the fact that he is a first offender. I have equally factored in the fact that he pleaded guilty earlier than later. All the foregoing are mitigating factors.
7. The Accused however admits that he has since realized that he used excessive force on the Deceased. This admission seems to confirm the community's assessment of him as per the findings of the probation officer. The observation of the community members was that the Accused tend to be hostile when agitated.
8. What the accused needs therefore is a custodial sentence. A term in prison, away from the comfort of community, will hopefully help to think clearly about the consequences of his uncontrolled temper.
9. Punishment is also about, interalia, retribution. It is the price that is owed to the society and the victim's family.
10. Taking into consideration a foregoing, I hereby sentence the Accused to 10 years in prison. The sentence will run from June 28, 2022, being the date, the Accused was first arraigned in court.
11. Right of Appeal 14 days.

DATED, SIGNED AND DELIVERED IN AN OPEN COURT AT KAKAMEGA THIS 29TH DAY OF SEPTEMBER 2023.

S. CHIRCHIR

JUDGE.

IN THE PRESENCE OF :

COURT ASSISTANT;- ERICK

MS. OSORO FOR THE STATE

ACCUSED PRESENT

