



**Republic v Nyamwange (Criminal Case 18 of 2017)
[2023] KEHC 22659 (KLR) (28 September 2023) (Sentence)**

Neutral citation: [2023] KEHC 22659 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 18 OF 2017
TA ODERA, J
SEPTEMBER 28, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

WYCLIFF ODUNDO NYAMWANGE ACCUSED

SENTENCE

1. Wycliff Oundo Nyamwange the (hereinafter referred to as the convict) was initially charged with Murder which was later reduced manslaughter contrary to Section 202 as read with Section 205 of the [penal code](#).
2. The particulars of the charge are that on 24.2.2017 at Sitima Line Rhonda Estate in Nakuru West Sub-County he caused the unlawful death of Enock Obwogi Nyamari.
3. The parties explored the path of plea bargain and they reached a settlement and filed the plea bargain agreement dated 14.3.23 .The same was adopted by the court and the convict pleaded guilty to the lesser charge of manslaughter. The undisputed facts are that on 24.2.17, the convict returned home and found that his wife had not prepared food for him and he started assaulting her. The Deceased who is a brother to his wife went to the house and found him assaulting the sister and he tried to intervene but the convict pounced on him and stabbed him. He sustained serious bodily injuries and passed away as a result thereof.
4. A pre-sentence report was filed on 12.6.2023 .The report indicated that the offender is an in-law to the family of the victim as his wife is a brother to the deceased .Also that he was a known drunkard who was always violent to his wife while drunk . The report indicated that the families had not reconciled as they were divided on the issue and the compensation demanded by the victim’s family was beyond the means of the convict’s family.



5. Prosecution proposed a sentence of 15 years while defence argued that a non -custodial sentence of probation would be reasonable considering that the convict pleaded guilty and saved judicial time, he was a first offender, he is 27 years old, married and a father to 3 children and that he was drunk at the material time and so incapable of knowing the nature of his actions. Counsel also told this court that the convict regrets the offence and that he has been in custody for 5 years which period ought to be taken into account during sentencing and that the convict has reached out to the family of the victim and they have agreed to forgive him.
6. Defence also submitted that the sentencing policy guidelines 2016 provides that the objectives of sentencing are as follows;
 - a. Retribution: To punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: To deter the offender from committing a similar offence subsequently as well as discourage other people from committing similar offences.
 - c. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.
 - d. Restorative justice: To address the needs arising from criminal conduct such as loss and damages.
 - e. Community protection: To protect the community by incapacitating the offender.
 - f. Denunciation: To communicates the community’s condemnation of the criminal conduct.
7. Counsel cited HCR 7 of 2016 Nakuru *Republic vs Robert Langat* where the charge of murder was reduced to manslaughter after plea bargain and the offender was placed on 3years probation. Also cited HCR E012 of 2021 Nakuru *Republic vs Clement Kiprof Cherutich alias John Melo* where the convict was sentenced to 3 years probation upon entering into a plea bargain agreement for manslaughter and was also sentenced to 3 years probation. Defence also brought to the attention of this court HCR 60 of 2007 Republic vs Joseph Maina where a charge of murder was changed to manslaughter after a successful plea bargain agreement and the convict was sentenced to 10 years imprisonment which was to be followed by 3 years probation. All the cited decisions herein emanate from the High court and are thus persuasive to this court.
8. On the issue of intoxication, Section 13 of the penal code provides;
 13. Intoxication
 - (1) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.
 - (2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and—
 - (a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or
 - (b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.



- (3) Where the defence under subsection (2) is established, then in a case falling under paragraph (a) thereof the accused shall be discharged, and in a case falling under paragraph (b) the provisions of this Code and of the Criminal Procedure Code (Cap. 75) relating to insanity shall apply.
- (4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.
- (5) For the purpose of this section, “intoxication” includes a state produced by narcotics or drugs.”

9. Intoxication is one of the defences recognized by the penal code and section 13 (4) of the said *code* provides that once a defence of intoxication has been proved then an accused would not be guilty of this offence . The said defence is thus not available to the convict herein as he pleaded guilty and therefore the case did not reach the defence stage.
10. On whether the family of the convict reconciled with that of the victim, though defence submitted that they had reconciled, the pre-sentence report says otherwise. The officer indicated that no reconciliation took place as the family of deceased was divided on the issue and some relatives of the victim were still bitter. Further that the family of the convict could not raise the compensation demanded by the victim’s family. It is thus clear to me that there was no reconciliation of the two families.
11. I have considered the offence, the violent nature of the convict , his age , the remand period ,the fact that he is a family man and also that his family has not reconciled with family that of the victim some of whom are still bitter over the death of their son . I find that the objectives of sentencing in this case and especially rehabilitation and retribution would be achieved by a custodial sentence which would also guarantee the safety of the convict.
12. I proceed to sentence him to 10 years imprisonment to run from 27.2.2017 when he was first remanded till completion.
13. Right of Appeal.

DELIVERED VIRTUALLY ON THIS 28TH DAYS OF SEPTEMBER 2023

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T.A. ODERA

JUDGE

Via teams platform in the presence of;

The Convict,

Mr Kihara for the State,

Mr Ooga for the Convict,

