



**Republic v Nafula (Criminal Case E034 of 2023)
[2023] KEHC 26779 (KLR) (20 December 2023) (Sentence)**

Neutral citation: [2023] KEHC 26779 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E034 OF 2023
REA OUGO, J
DECEMBER 20, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

ESTHER SHIKUKU NAFULA ACCUSED

SENTENCE

1. Esther Shikuku Nafula (the accused) after a plea bargain agreement admitted she unlawfully caused the death of Emmanuel Sikuku Masombo on the 13th day of August 2023. She admitted the facts as was tendered by the prosecution and this court convicted her on her plea of guilty.
2. The accused is a first offender. The presentence report dated the 11th December 2023 indicates the accused is 32 years old. She was married to the deceased. She informed the probation officer that the deceased had a habit of selling their farm produce immediately after harvesting. That her husband did not support her in raising the family and he was a drunkard. The deceased had carried ten bags of maize from her house and stored them in his mother’s house and stored the maize at mother’s house. She demanded that he return the maize and he was adamant. On the fateful night she instructed all her children to sleep in the kitchen and she cut him with a panga and kept his body in their store. The report further indicates she appeared unremorseful. The report indicates that she appeared confused during the interview though she pleaded for leniency and a non-custodial sentence. On the victim’s family, it is reported that the accused and deceased had 4 children and their eldest child appeared still affected by the father’s leave. Two of the deceased’s brothers who were interviewed were against her being released on a non-custodial sentence as the matter was still fresh and the offender would be harmed. The area chief claims that the offender is likely to be harmed by angry members of the community unless she goes back to her maiden home. The report further indicates that the accused lacks strong community ties that none of her family members showed a willingness to host her or participate in her rehabilitation and that she does not enjoy community acceptance. She is not fit for a non-custodial sentence.



3. Miss Natwati on behalf of the accused, in mitigation has asked this court to note that the accused is a first offender, the background given and that she has been in custody for four months. That during the commission of the offence, the accused was defending herself from the drunk and abusive husband and that in the heat of passion provoked by fear and the anger made her fatally injure the deceased. She cut the deceased once on the neck and this shows that she did not have intentions of killing the deceased and that the deceased bled profusely to death. She has a young family and at the moment they are staying with their paternal grandmother who is 76 years old now that she is the only person who can care for and love their children. She is remorseful, regrets her action and desires to be released to go and care for her children. She has learnt her lesson she is a changed citizen and has good morals. She has an alternative place to look after her children.
4. I have considered the sentence provided in law for the offence of manslaughter, the circumstances of this case, the sentencing guidelines, the accused's mitigation and the probation report. The accused is a first offender. A life was lost. Though provoked she chose to take a panga and cut the deceased on the neck and left him to bleed to death. The probation report is not favourable. Even her children are still traumatised by the incident. Her family do not even desire to have her home. This is unfortunate. I have considered the period she has been in remand. In my view, a non-custodial sentence is not suitable. I therefore sentence the accused Esther Shikuku Nafula to serve ten (10) years imprisonment. She has a right of appeal within 14 days.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 20TH DAY OF DECEMBER 2023.

R.E. OUGO

JUDGE

In the presence of;

Esther Shikuku Nafula/ Accused - Present

Miss Mwaniki for the State

Miss Natwati - Absent

Wilkister - C/A

