



**Republic v Nyangweso (Criminal Case 1 of 2020)
[2023] KEHC 27344 (KLR) (19 December 2023) (Sentence)**

Neutral citation: [2023] KEHC 27344 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL CASE 1 OF 2020
SN MUTUKU, J
DECEMBER 19, 2023**

BETWEEN

REPBLIC PROSECUTOR

AND

JOASH ONSEMBO NYANGWESO ACCUSED

SENTENCE

1. Joash Onsembo Nyangweso, the accused herein, was initially charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on 18th December, 2019 at Olekesasi area, Ongata Rongai Township, within Kajiado North Sub County within Kajiado County, he unlawfully killed Moureen Nyabonyi Obaigwa.
2. The accused took plea for the offence of murder on 10th February, 2020. He pleaded not guilty. The matter did not proceed to trial for the offence of murder. Instead, the parties entered into a plea bargain agreement dated 6th March, 2023, with the offence reduced to the lesser charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code.
3. The Plea Bargain proceedings commenced on 31st July, 2023, when the plea was taken. The accused pleaded guilty to manslaughter after which the prosecution presented the facts of the case which show that the accused and the deceased were married. They had one child. Their marriage was a rocky one with allegations of infidelity on the part of the deceased. They would separate but would occasionally meet. On 18th December, 2019 they agreed to meet and spend the night at the deceased's house. This was confirmed by the deceased's land lady, Mary Ngone Nyakoe. The accused cooked for the deceased. They later went to bed. However, the deceased refused to give conjugal right to the accused, which angered him. He strangled the deceased to death. He decided to take pesticide to commit suicide. He left the house. The accused went to Olekasi police station, but he was chased away. He was later found by a tuktuk driver, Peter Ouma Omollo, who rushed him to Nairobi Women's Hospital where he received treatment. He regained consciousness. He confessed to have strangled his wife. A report was



made to Ongata Rongai Police Station leading to the arrest of the the accused. He led them to his house where they found the deceased's body. Post- mortem was conducted on 22nd December, 2019. The pathologist confirmed that the cause of death was asphyxia of the neck compression due to manual strangulation.

4. The accused admitted the facts as correct.
5. This court found the accused guilty of manslaughter and convicted him on his own plea of guilt. The matter was set down for mitigation hearing on 22nd November 2023. The court called for a report from the probation office. The report was filed on 22nd November 2023.
6. In mitigation, Ms. Mageto counsel for the accused, mitigated that the accused is now 37 years old that he was 33 years when he was arrested; that he is remorseful; that he has been in custody for 4 years; that during that time the accused had attended seminars and has reflected on his life and now understands life better and that he has sat for KCPE and performed very well. It was mitigated that while in custody he has managed to reflect on his actions and understands the consequences of his actions; that he was provoked into committing this offence; that he was a casual labourer as a guard and used his salary to send money for the upkeep of the child and the mother of the victim.
7. Ms Mageto told the court that the accused has no previous criminal records, is a first offender and that he has been rehabilitated and therefore a non-custodial sentence would serve the purpose.
8. Ms Nyaraita for the prosecution submitted that this was a gender-based violence offence; that the accused and the deceased were in a relationship; that the deceased was young, aged 21 years, at the time of the offence and that they had a young child; that the child has been left at the care of the maternal grandmother and that the family of the victim is still bitter. She submitted that there was no provocation by the deceased, but that the offence committed due to jealousy. She urged that a custodial sentence would be a fit punishment for this offence.
9. I have read the report dated 21st November, 2023. It recommends that the matter be left at the discretion of the court. It also gives this court information regarding the social circumstances of the accused.
10. I have noted from the facts of this case and the probation officer's report that the accused and the deceased had a troubled relationship. The accused is remorseful for what he did. He informed the probation officer that he has had time to reflect on his actions and that he believes that he could have handled the situation in a better way. By pleading guilty to manslaughter, the accused has saved on judicial time and enable this court to conclude this matter expeditiously.
11. I have noted from court records that the accused did not manage to raise bond terms and he remained in custody for the entire four years until this matter was concluded through these plea bargain proceedings. I have taken his stay in custody into account. In my considered view, given that he has spent four years in custody, it would be fitting to have him spend extra time serving custodial and non-custodial sentence under the supervision of Probation Office and be subjected to counselling to enable him to realize the seriousness of the offence and that every disagreement ought not to lead to killing another person.
12. The accused is placed on 12 months custodial sentence after which he will serve 18 months non-custodial sentence. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 19TH DAY OF DECEMBER 2023.

S. N. MUTUKU



JUDGE

