



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL CASE NUMBER 72 OF 2016**

**REPUBLIC..... ODPD**

**VERSUS**

**SAMUEL NG'ANG'A...1<sup>ST</sup> ACCUSED**

**MARY WANJIKU..... 2<sup>ND</sup> ACCUSED**

**S E N T E N C E**

1. Samuel Ng'ang'a was charged together with his daughter Mary Wanjiku for **Murder Contrary to Section 203 as read with 204 of the Penal Code.**
2. It was alleged that on 29<sup>th</sup> December 2016 at Mang'u Area Rongai District, Nakuru County, they jointly murdered an infant baby girl born to Mary Wanjiku.
3. Both pleaded not guilty on 23<sup>rd</sup> January 2019, having first appeared in court on 30<sup>th</sup> December 2016.
4. Dr. Titus Ngulungu, the pathologist testified on 11<sup>th</sup> October 2017 and produced the post mortem report.
5. Mary was released on bond on 24<sup>th</sup> December 2018 when she got sureties. Her father remained in custody.
6. Plea Agreement negotiations pursuant to s. 137A of the Criminal Procedure Code began in March 2019. On 1<sup>st</sup> March 2022 the court was told that the 1<sup>st</sup> accused Samwel Ng'ang'a had negotiated a Plea Agreement with the state for the lesser charge of **Manslaughter Contrary to Section 202 as read with 205 of the Penal Code.**
7. The facts were that, the said Mary Wanjiku was pregnant. On the material date she went to the toilet, a pit latrine, after developing stomach pains. Turns out they were labour pains and the baby dropped into the pit latrine. She was scared and she ran away. The baby began to cry in the toilet. The 1<sup>st</sup> accused heard the baby crying, instead of rescuing the baby, he threw stones into the pit latrine. These stones hit the baby, who died. When people learnt about this, they reported to the police who came to the scene, retrieved the body of the baby and arrested the 1<sup>st</sup> accused person and his daughter. The post mortem report indicated cause of death as: **A combination of Asphyxia and head injury secondary to blunt trauma to the head. Asphyxia resultant of sewage matter aspiration.**
8. The 1<sup>st</sup> accused pleaded guilty to the charge and the facts. He was convicted accordingly. The prosecution submitted that he was a first offender and proposed 10 years imprisonment.
9. Counsel for the accused submitted that the accused was 1<sup>st</sup> offender with young family and no relative. That he had been in custody for 6 years and had learnt a lot from this incident. He sought leniency from the court. Counsel recommended one year non-custodial sentence.
10. The Pre-Sentence Report placed before me presents a 45 year old man who has been in custody since 30<sup>th</sup> December 2016 who is remorseful for the offence, and whose family and community vouch for his non-custodial sentence. His co-accused, his daughter holds no grudges against her father, she has moved on, gotten marriage and has a baby.
11. It is reported that he is a hardworking person, despite the poverty in his family and lack of formal education.

12. I have carefully considered the mitigation by the accused, the submissions by the state, I have taken into consideration the guidance availed to court by the Sentencing Police Guidelines. The only issue is what sentence is appropriate in the circumstances of this case.

The accused negotiated the lesser charge of Manslaughter. The punishment for Manslaughter is provided for under **Section 205 of the Criminal Procedure Code** which states:

**“205. Punishment of manslaughter Any person who commits the felony of manslaughter is liable to imprisonment for life.”**

13. From the facts the new born fell in the toilet when the mother went to answer a call of nature, it is not clear what exactly happened, and what caused the accused to throw stones into the pit latrine, what is clear is that the infant died out of breathing in the sewage sludge, which caused asphyxia and also impact of blunt object on her head. The 1<sup>st</sup> accused has spent six (6) years in prison custody. Whatever the reason was for his action he has had time while in prison to reflect on his actions.

**14. Section 333 (2) of the Criminal Procedure Code** requires that this period be taken into account while determining a sentence. It states;

**“333. Warrant in case of sentence of imprisonment**

(1)....

(2) Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

15. It is my considered view that the time spent in custody is sufficient when one looks at it *vis a vis* the proposal by the state. I would find and hold therefore that that time is sufficient time in custody for the accused.

16. Considering the time, the accused has been away from home he would definitely need time to settle down, reintegrate back to family and society. A period under Probation supervision for this purpose would serve to ensure a smooth transition. He proposes one year, the Probation Officer suggests three (3) years, during which period they will focus on reintegration and empowerment of the 1<sup>st</sup> accused, together with counselling on good decision making and proper life skills. I am persuaded that this is necessary and important to enable the accused person re-enter society, and live a crime free life, while reconciling with his family and grandchildren.

17. I find that a period of two years on probation supervision would be sufficient.

18. The first accused person be and is hereby placed on Probation Supervision for two (2) years during which period he will abide by the probation order, and Probation and After Care Services (PACs) have committed to focus on his reintegration, empowerment, proper life skills and counselling.

19. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7<sup>TH</sup> DAY OF APRIL, 2022**

**MUMBUA T MATHEKA**

**JUDGE**

In the presence of:

C/A Edna

For state: Ms. Mumbi

Mr. Miruka for 1<sup>st</sup> accused