



**Republic v Kinyanjui (Criminal Appeal E003 of 2020)
[2022] KEHC 11098 (KLR) (31 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11098 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL APPEAL E003 OF 2020
CM KARIUKI, J
MAY 31, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPH MATHENGE KINYANJUI ACCUSED

RULING

1. The Accused herein was charged with Offence of Murder Contrary to section 203 as read with section 204 of the *Penal Code* cap 63 Laws of Kenya.
2. He was after trial convicted of offence of lesser offence of manslaughter after the court reduced the offence of Murder thereof. He was said by the state to be a first offender and was offered chance to mitigate via his defence counsel.
3. The court also called for Post-Conviction Report to be filed by the Probation Officer which was done. There were also victim family's views made by the same Probation Officer.
4. In his mitigation, the accused is said to be remorseful and is a first offender. He had one remaining child with the estranged wife (PW1).
5. In the Post-Conviction Report, the Probation Officer paints a picture of a bitter estranged wife who is bitter in life and possibly abusing drugs.
6. The court has considered the mitigations tendered by the defense, the post-conviction and victim's family views reports.
7. The court notes that, the accused took the victim child via threats from its mother, ran into a river where he claims he fell therein and him and the child almost drowned.



8. Instead of parting with child to be resuscitated by the PW1 and people who came to the scene, the accused ran away with semi-conscious victim for a distance before dumping her in a culvert. As a result, the child who was innocent and had nothing to do with the parents fights lost her precious life at a very young age.
9. This calls for a custodial sentence to deter such future acts. Proper procedure of resolving disputes must be adopted rather than raw force like one exhibited by the accused herein. I note in probation officer's report pw1 is unhappy on reduction of offence to manslaughter from murder. She fears accused once out may disrupt her life.
10. In circumstances of the offence, the court notes that the accused acted very irresponsibly and recklessly by first ignoring Children's Officer order of custody vested in PW1 and taking victim by force, running into the river with the child and consequently child dying as a result of drowning.
11. Thus, this court finds that the appropriate sentence to be awarded to the accused accused is;
 - (i) The accused is sentenced to serve five (5) years imprisonment.
 - (j) Right of appeal explained.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 31 ST DAY OF MAY, 2022.

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CHARLES KARIUKI

JUDGE

