



Republic v Orina (Criminal Case 46 of 2018) [2022] KEHC 3334 (KLR) (30 June 2022) (Sentence)

Neutral citation: [2022] KEHC 3334 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 46 OF 2018**

JM NGUGI, J

JUNE 30, 2022

BETWEEN

REPUBLIC PROSECUTION

AND

JOSECK MUCHAMA ORINA ACCUSED

SENTENCE

1. Joseck Muchama Orina (“accused Person”) was originally charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. He was accused of killing, with premeditation, James Wamuti (“Deceased”) on the 16th day of February, 2018 at Tegea Area, Kuresoi North Sub-County within Nakuru County.
2. The accused person pleaded not guilty to the charge of murder and trial commenced. However, thereafter, the parties negotiated a plea agreement.
3. By a Plea Agreement dated 25/01/2022, the Accused Person pleaded guilty to the charge of manslaughter contrary to section 202 as read together with section 205 of the *Penal Code*. After due caution, and after satisfying myself that the Plea Agreement was entered into knowingly and voluntarily, I recorded a conviction and called for pre-sentencing report and victim impact statements (if desired) and set the case for a sentencing hearing.
4. The agreed facts of the case are laid out in the Plea Agreement are simply that the accused person and the Deceased, who were friends and neighbours, went out drinking on the material day – February 16, 2018. While there and while drunk, they engaged in a scuffle after the Deceased refused to share his drink with the accused person after the latter had shared earlier shared his. In the course of the drunken scuffle that took place, the accused person hit the Deceased with an off-cut piece of timber on the head. The extent of the injury was not immediately apparent to the Deceased or the accused person. However, in the next few days, the Deceased developed intense headaches and fainting spells. He sought medical attention. The accused person, who had, by that time, reconciled with the Deceased,



paid for the medical bills. Unfortunately, the internal bleeding was not discovered in good time and the Deceased died 12 days later. The pathologist described the cause of death as severe head injury (occipital subdural hematoma) and left side hemothorax secondary to assault.

5. The Prosecutor informed the court that the accused person is a first offender. She further told the court that the family of the Deceased had requested the DPP to request for non-custodial sentence and that the mother of the Deceased wished to address court. Her name is Alice Muthoni. She told the court that the Deceased and the Accused Persons were best friends and that her husband, the Deceased's father, had told her before passing on one year ago that he had forgiven the accused person and to see to it that the Judiciary is aware that the family bore no grudges against the accused person. She told the court that the two families met and talked and concluded that the mishap was inadvertent.
6. In mitigation, the accused person informed the court that he was deeply remorseful for what happened and that he regrets the death of his friend. He said that he is quite young – at 26 years old – and that he is married with two children. He is the sole provider for his family. He begged for leniency. He said that he had learnt a lot from the experience and that he is a much better person now. He claimed that he has stopped drinking.
7. The accused person's advocate accentuated those points. He pointed out that the accused person was barely 22 years old at the time the offence was committed; and that it was committed under the influence of alcohol. He asked the court to take account of the fact that the accused person had a young family and had taken responsibility for his actions.
8. The court requested for a Probation Report. The one filed is quite favourable to the accused person and recommends non-custodial sentence. It describes the accused person as a peaceful individual in the community who had no negative antecedents. The Report also confirms that the two families had embraced reconciliation.
9. I have considered the following relevant factors in fashioning an appropriate sentence for the accused person in this case:
 - a. The accused person pleaded guilty to the reduced charge of manslaughter and therefore saved the family the anguish of having to testify and also saved much judicial time.
 - b. The accused person appeared to be genuinely remorseful.
 - c. The family of the victim has expressed a strong wish that the accused person be committed to non-custodial sentence.
 - d. The accused person is a first offender.
 - e. The Probation Report is quite favourable and recommends non-custodial sentence which, it says, will provide an opportunity for the accused person to be rehabilitated.
 - f. The circumstances of the crime do not point to a planned, depraved, or violent conduct on the part of the accused person which should attract societal opprobrium or disapproval in the form of a prison sentence.
10. Given all these factors, I have concluded no sentencing objectives will be achieved through a custodial sentence. I have taken the sentiments of the victim's family as well as the Probation Report seriously in coming to the conclusion that only a probation period is warranted in the circumstances. I, therefore, sentence the accused person to serve a Probation Sentence for a period of three years.
11. Orders accordingly.



DATED AND DELIVERED AT NAKURU THIS 30TH DAY OF JUNE, 2022

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JOEL NGUGI

JUDGE

