



**Republic v Shitubi (Criminal Case 47 of 2017)  
[2022] KEHC 12309 (KLR) (28 July 2022) (Sentence)**

Neutral citation: [2022] KEHC 12309 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE 47 OF 2017  
PJO OTIENO, J  
JULY 28, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOY TRIZAR SHITUBI ..... ACCUSED**

**SENTENCE**

1. A plea agreement dated June 13, 2022 and filed in court on June 20, 2022, came before court for adoption, was adopted a plea of guilty was entered against the accused for the offence of manslaughter. The accused was thereby convicted on own plea of guilty to the offence of manslaughter.
2. Pursuant to that conviction following the plea of guilty having been entered, the court directed that a pre-sentencing and/or a victim impact statement report be filed by the probation officer prior to mitigation and sentencing.
3. The pre-sentence report filed on July 26, 2022 reveals that the accused’s family, the community and aftercare services are open to having her back at home, in order to initiate the reconciliation process and for her to be put under an empowerment program to help her enhance and perfect livelihood skills. Even the deceased family is said to have processed the loss, moved on and hold no grudge as to portend any risk of an attack on the accused.
4. That report recommends a non-custodial sentence by way of probation so that he is put through a program to develop a means of earning a living and be assisted to work on her anger behavior and management so that she integrates back into the society as a useful citizen.
5. The plea agreement on its part, while appreciating the sentence to rest wholly at the discretion of the court proposes a custodial sentence of four years computed in terms of section 333(2) of the *Criminal Procedure Code*.



6. I have taken into account the recommendations made in that presentence report, the proposal by the prosecution in the plea agreement and the mitigation offered by Mr Mbaka and his client, on behalf of the accused. I have equally taken into consideration the sentiments expressed by Ms Chala for the prosecution.
7. Drawing guidance from the objectives of sentencing in Criminal justice system, and being cognizant of the gravity of the offence for which the accused has been convicted, the age of the accused and that of her children, I find that the circumstances of the case and community situation favours leniency to the accused even though a non-custodial sentence may not be the appropriate sentence.
8. The circumstances revealed in the plea agreement point more to the accused having been provoked by the deceased even though her reaction to such provocation depict an amount of anger that needs management.
9. Having given regard to the above factors, I determine to give the accused a lenient but custodial sentence of 5 years' imprisonment. The term shall be calculated from the day she was arrested and put in custody being November 2, 2017.
10. Upon release, she shall serve a probation for a period of two years and the probation officer in charge of her rural home to assist her integrate into community by putting into any appropriate program to assist her with anger management and acquisition of livelihood skills

**DATED, SIGNED AND DELIVERED IN OPEN COURT, THIS 28<sup>TH</sup> DAY OF JULY 2022.**

**PATRICK J O OTIENO**

**JUDGE**

**In presence of**

Ms Chala for the prosecution

Mr Mbaka for the accused

Accused – present

