



**Logila v Republic (Criminal Case E003 of 2021)
[2022] KEHC 13863 (KLR) (22 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13863 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE E003 OF 2021
GL NZIOKA, J
SEPTEMBER 22, 2022**

BETWEEN

PETER NAKUJILO LOGILA APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. On March 8, 2021, the accused was charged with the offence of; murder contrary to section 203 as read together with section 204 of *Penal Code*. He pleaded not guilty to the charges. Subsequently on November 10, 2021, the parties commenced plea bargaining negotiations and on January 27, 2022, a plea bargaining agreement was reached and executed by the parties.
2. As a result of the agreement presented to the court, the charges were reduced to the charge of; manslaughter contrary to section 202 as read together with section 205 of the *Penal Code*. The accused pleaded guilty to the charge and was convicted accordingly.
3. The court then ordered for pre-sentence report which has been filed accordingly. In addition, both parties have filed submissions on sentence which I have also considered alongside the mitigation by the accused's counsel and the records presented by the prosecution.
4. Pursuant to the aforesaid, I note that, the accused submission filed, stated as follows:
 - a. The accused pleaded guilty to the charge and saved the court of its precious judicial time and resources.
 - b. The accused age is unknown but of fairly young age of about 30 years and in our humble submission would be of resource to nation building if directed in the right direction.
 - c. The accused is the 1st born of the four children in a poor family set up wallowing in poverty practicing subsistence farming and own no properties.



- d. The accused acted in self defence was unarmed and was attacked by the deceased who was armed and was a question of accused overpowering the deceased and using the deceased weapons against the deceased.
 - e. The accused surrendered himself and weapons to the village elder and to the police station thus co-operated with the law enforcement agencies.
 - f. Both the deceased and the accused were drunk having enjoyed a local brew at the invitation of the deceased.
 - g. The offender is remorseful and submits that he had no intention of ending deceased's life.
 - h. The accused has no previous criminal records.
 - i. The offender's family and the local community are willing to absorb the offender back to the family and the entire Turkana community. They indicate their willingness to rehabilitate the offender in the likely event that he is considered for a non-custodial sentence.
 - j. The accused has been in remand for 1½ years and we submit is sufficient punishment.
 - k. The pre-sentence report is favourable to none custodial sentence.
5. However, the respondent filed submissions dated; May 7, 2022 and stated that: -
- a. The probation report is negative towards the accused person.
 - b. That accused is a man who failed to restrain himself during an argument with the deceased. He took a panga and cut him on the head and on the neck clearly showing his motive that he wanted to end the life of the deceased.
 - c. That the deceased had invited the accused to his home so that they enjoy a drink before the sad event.
 - d. That the accused showed no mercy on the deceased, this is evidence on the several cuts he inflicted on deceased with on his head and his neck. This was a cold, brutal and inhuman murder.
 - e. That the deceased had a wife and children who depended on him and they are left to fend for themselves.
 - f. That the victim's family are vehemently opposed to his released from custody, describing the accused as a dangerous man.
 - g. That the court ought to note that the accused totally failed to restrain his temperaments and this is not a man who should be released to the society. He is ruthless and cold and the court ought to protect the society from him.
6. In the same manner, I note from the pre-sentence report that, although the relatives of the accused allege that he has never had any previous misconduct, the victim's family state that, he is a dangerous man, and whereas the accused's family and probation officer recommends a non-custodial sentence, the victim's family are opposed to the same.
7. Be that as it may, the principles that govern sentencing are settled through various provisions. In that regard I note that; article 50(2)(p) of the *Constitution of Kenya 2010*, provides for the right of the convict to the benefit from the least severe of the prescribed punishments for an offence, if



the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing.

8. In the same vein the objective of sentence must be considered. Clause 9 of the [Sentencing Policy Guidelines of Judiciary](#), in Kenya states that the objectives of sentencing are: -

- a. Retribution: To punish the offender for his/her criminal conduct in a just manner.
- b. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
- c. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
- d. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
- e. Community protection: To protect the community by incapacitating the offender.
- f. Denunciation: To communicate the community's condemnation of the criminal conduct

9. Finally, though given the guidelines here below were set by the Supreme Court in the case of; [Francis Karioko Muruatetu & another v Republic](#), Petition No 15 of 2015, for, re-sentencing are they are quite helpful in the case herein. The guidelines state:

“(71) ...the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- (a) age of the offender;
- (b) being a first offender;
- (c) whether the offender pleaded guilty;
- (d) character and record of the offender;
- (e) commission of the offence in response to gender-based violence;
- (f) remorsefulness of the offender;
- (g) the possibility of reform and social re-adaptation of the offender;
- (h) any other factor that the Court considers relevant.

10. In a nutshell the common factors considered include:

- a. Whether the offender is a "first-time" or repeat offender;
- b. Whether the offender was an accessory (helping the main offender) or the main offender;
- c. Whether the offender committed the crime under great personal stress or duress;
- d. Whether anyone was hurt, and whether the crime was committed in a manner that was unlikely to result in anyone being hurt; and
- e. Whether the offender was particularly cruel to a victim, or particularly destructive, or vindictive.



11. In this case, I have considered the accused is a first offender and that he pleaded guilty to the lesser charge of manslaughter saving court's time. However, I have also considered the circumstances under which the offence was committed. It does appear that, both the accused and deceased were drunk and the deceased is said to have been the one who first attacked the accused with a panga. The accused though said to have reacted in self-defense, in my opinion he "over reached". He had successfully disarmed the deceased and therefore could walk away but instead acted in the same manner as the deceased, attaching the deceased fatally.
12. Having taken into account the aforesaid and the period the accused has been in custody of about of about a year and half he was in custody, I sentence the accused to serve a custodial period of five (5) years in prison with effect from the date of this order. He has a right of appeal within fourteen (14) days.
13. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 22ND DAY OF SEPTEMBER, 2022

GRACE L. NZIOKA

JUDGE

In the presence:

Ms Maingi for the State

Mr Waigwa for the Accused

Accused custody present and in court virtually

Ms Ogutu: Court Assistance

