



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

CRIMINAL CASE (MURDER) NO. 52 OF 2020

REPUBLIC.....PROSECUTION

VERSUS

ISAAC WANJALA MURUMBA.....ACCUSED

RULING ON SENTENCE

1. **ISAAC WANJALA MURUMBA** had been charged with an offence of murder contrary to section 203 and 204 of the Penal Code, but the charge was eventually reduced to manslaughter following a plea bargain agreement. The court entered a guilty of guilty to the said charge of manslaughter on the accuser's own plea of guilty to said charge after the court accepted the plea agreement pursuant to section 137H of the Criminal Procedure Code. This was after the court was satisfied of the factual basis of the plea agreement and that the accused was competent, of sound mind, and had acted voluntarily in accordance with section 137G of the Criminal Procedure Code at the time of the agreement.
2. In terms of section 202 as read with section 205 of the Penal Code the accused, upon being convicted, is subject to serve life imprisonment.
3. Ms. Mukangu represents the prosecution, while Ms. Wakoli represents the accused. Ms. Mukangu argued in her sentencing submissions that the state is opposed to a non-custodial sentence and requested a lenient custodial sentence. Ms. Wakoli contended that the accused is a first-time offender who is remorseful. She further asserted that the accused had had anger management counseling while in prison and that he is a respectable member of society. Counsel further sought for a non-custodial sentence on the grounds that the accused has just lost his child. It was counsel's submission that the accused is remorseful and apologetic for the unfortunate turn of events.
4. On record is a pre-sentence report dated 15th December, 2021 that indicates that the convict arrived home to find the deceased not at home and on asking his spouse on the deceased's whereabouts, the spouse claimed that she had no idea. It was then that the accused went on a search in the neighborhood and found her at the home of one Everline Wafula and it was in the process of forcefully taking the deceased home that a door frame hit her head and neck which resulted in her untimely death. It also indicated that the family and the community had a positive attitude towards him and indicated willingness to assist him resettle. It was reported that the convict had no criminal record.
5. Under section 205 of the Penal Code, manslaughter is punishable by a maximum sentence of life in prison. This is, however, the maximum penalty that is normally reserved for the most serious of such situations. This does not, in my opinion, fall into the category of the most heinous examples of manslaughter. The state has stated that the accused is a first-time offender. As a result, I've ruled out life imprisonment.
6. Case law would be the starting point in determining a custodial sentence for manslaughter offenses because the Judiciary Sentencing Policy Guidelines are silent on the path to take in manslaughter instances. In *V M K v Republic* [2015] eKLR ten years in jail was given for manslaughter. When a dangerous weapon was used in the commission of the crime, courts are more likely to sentence the offender to life in prison. There is no proof that the accused utilized such a weapon in this case. I have noted that the convict pleaded guilty and where a judge takes a plea of guilty into account, it is important that the convict says he or she has done so as noted in the case of *R v. Fearon* [1996] 2 Cr. App. In this case therefore I have taken into account the fact that the convict readily pleaded guilty, as one of the factors mitigating his sentence. Further, the English practice of a reduction of one third has been held to be an appropriate discount as held in the case of **R v. Buffrey (1993) 14 Cr App R (S) 511** where the Court of Appeal in England indicated that while there was no absolute rule as to what the discount should be, as general guidance the court believed that something of the order of one-third would be an appropriate discount. In light of the convict's plea of guilty, and persuaded by the English practice, because the convict before me pleaded guilty, I propose at this point to exclude the sentence of life imprisonment and I shall consider reducing the sentence by one third from the starting point of ten years to a period of two years' imprisonment. I find a sentence of two years imprisonment to be reasonable in the circumstances.
7. In the case of **Republic v Daniel Okello Rapuch [2017] eKLR**, a sentence of 12 months imprisonment was meted out on a man who killed another on the allegation of being involved in an illicit love affair with his girlfriend. The facts revealed that the accused and deceased had a great relationship, and that on the material date, the deceased returned home to find his young daughter missing from the house, and

that his wife was unaware of her whereabouts, prompting him to act as any loving father would and find his daughter, and that in the process of taking her home, the accused knocked her against the table and door, injuring her and causing her death. In light of aggravating factors, I have adopted a starting point of two years' imprisonment. I am alive to the fact that the circumstances herein appear to have turned tragic to the father and daughter which was rather unfortunate. The convict was not aware that the knocking of the deceased against the table and the door while taking her home would cause injuries that would amount to the death of his daughter. It would appear to me that the accused was overzealous in trying to police and protect his daughter that he ended up hurting and eventually killing her. Indeed, the life of a young innocent girl was cut short as a result of his overzealousness. Had he acted with restraint and wisdom, the deceased would be alive today. It appears the pre-sentence report is favorable to an arrangement that accused rejoins his family.

8. I have considered the fact that the convict is a first offender, a relatively young man at the age of 34 years when he committed the offence. It has also transpired that the accused has some anger relate issues and which requires that he serves a custodial sentence in order to undergo proper anger management before rejoining his family. In that regard a custodial sentence is found to be an appropriate sentence and the period of two (2) years' imprisonment is justified in light of the mitigating factors. It is hoped that the accused will live with the guilt of having caused the death of his daughter.

9. In accordance with section 333(2) of the Criminal Procedure Code, the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. It is noted that the accused has been in custody since 6th October, 2021. I hereby direct that the period spent in custody during the pendency of the trial be taken into account and be deducted from the term.

10. In view of the foregoing, the accused is hereby ordered to serve a sentence of (3) three years imprisonment which shall commence from the 6th October, 2021.

It is so ordered.

DATED AND DELIVERED AT BUNGOMA THIS 20TH DAY OF DECEMBER, 2021

D. KEMEI

JUDGE

IN THE PRESENCE OF:

ISAAC WANJALA MURUMBA ACCUSED

MISS WAKOLI FOR THE ACCUSED

MRS. MUKANGA FOR PROSECUTION

KIZITO COURT ASSISTANT