



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Nyaboga (Criminal Case E043 of 2023)
[2025] KEHC 1409 (KLR) (24 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 1409 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL CASE E043 OF 2023
TA ODERA, J
FEBRUARY 24, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MOSES ONYWOKI NYABOGA ACCUSED

SENTENCE

1. The offender herein was initially charged with murder contrary to Section 203 as read with 204 of the *Penal Code*. He later entered into a plea bargain agreement with prosecution and the charges were reduced to manslaughter contrary to Section 202 as read with 205 of the *Penal Code*. He pleaded guilty to manslaughter and he was accordingly convicted.
2. This case is now coming up for sentencing. The court called for a pre-sentence report from the probation and after Care department and it has emerged from the same that the convict was an adoptive son of the deceased.
3. It has emerged that there was bad blood between accused and deceased over the adoptive daughter of deceased whom he had a child with and she left his home and deceased blamed accused for this.
4. The report indicates the offender is a youthful man aged 22 with a young family and that the community members and the family of deceased are still bitter with the offender and have vowed to end his life if he goes back home. The report recommends him a custodial sentence for his own safety and rehabilitation for his behavioral problems
4. Defence Counsel submitted that the offender is a young man with a family and is remorseful is a married and has one child, he is remorseful, and was a first offender. Prosecution also supported the contention that it was submitted that the offender entered into a plea bargain agreement due to his remorse and so he prays for a non- custodial sentence.



5. The Supreme Court in the *Muruatetu case* set down the following factors to be considered in sentencing in murder trials;
- 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.

I have considered the age of the offender nature of the offence, its circumstances, the pre-sentence report, mitigation, submissions, the remand period of about 2 years, the fact that he is remorseful and the sentiments of the family of deceased to deceased. I agree with defence counsel that the offender deserves leniency for entering into a plea bargain agreement and saved the precious judicial time of the court and expedited the determination of the case. It is clear that the community and the deceased's family is still bitter with the offender and have threatened to revenge. Though accused says he was protecting himself from the threat by deceased to cut him, he used excessive force to defend himself and then he hid the body in a pit latrine causing the family untold anxiety accused also brutally murdered the deceased and the body inside a pit latrine. I find that a non - custodial sentence is not appropriate in circumstances of this case as it would be risky to the life of the offender.

However, since the offender has saved the judicial time and resources as rightly submitted by defence counsel, he is entitled to some concession on the sentence.

I proceed to sentence the offender to serve 10 years imprisonment. The same will run from 9.10.23 when he was first arraigned in court till completion in full.

14 days Right of appeal.

T.A ODERA

JUDGE

24.2.25

Delivered Virtually Via Teams Platform in the Presence of:

The offender

Koima for the State

Court Assistant: Oigo

Miss Gogi advocate for the Offender

