



**Republic v Nakitari (Criminal Case E047 of 2023)  
[2025] KEHC 2372 (KLR) (11 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 2372 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL CASE E047 OF 2023  
REA OUGO, J  
FEBRUARY 11, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**MOSES TUTEI NAKITARI ..... ACCUSED**

**SENTENCE**

1. Moses Tutei Nakitari ( the accused) was charged with the offence with murder contrary to section 203 as read with section 204 of the *Penal Code*. After a plea bargain agreement, he pleaded guilty to the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*. The facts were read to him and he admitted that the facts were true of the events that happened on the material day. This court thereafter convicted the accused on his plea of guilty of manslaughter.
2. This court sought a pre-sentence report on the accused and counsel filed for the accused filed written submissions on sentence.
3. According to the presentence report the accused is 47 years old and regrets his actions. The recommendation is that the court can use its discretion to prefer an appropriate sentence and that if he is placed on probation they will supervise him. The deceased family regretted the loss of their loved one and was still traumatized by the death of their loved one, but they have forgiven the accused and have no feelings against him. There has been no formal reconciliation.
4. According to the prosecution the accused is a first offender. Counsel for the accused in mitigation relied on the guidelines judiciary guidelines on sentencing which include retribution deterrent restorative justice community protection and denunciation. It was submitted that the accused regrets his actions and is asking the court for forgiveness and leniency in sentencing him as he is a first offender. It was further submitted that the accused entered the plea bargain to save judicial time and that the family of the victim had forgiven him. The victim did not die on the spot and neither was the accused present



when she died both the accused and the victim were in a relationship and were drunk on the material day. That it is the victim who hit the accused first provoking him to fight back. Reliance was made on the case of R versus Daniel Okello Rapuch [2017] eKLR where the court sentenced an accused to 12 months on an illicit love affair death and the case of R versus Ishmail Hussein Ibrahim [2018] eKLR where the court acquitted and accused person after he pleaded guilty to acting on self-defence. According to the accused, the victim was an alcoholic addict and he lived with her as a wife and would sometimes sleep without eating food. He had no malice and he was provoked by the behaviour of the wife of disappearing from the home. Counsel asked the court to consider the accused mitigating factors and also that he was remorseful and committed the offense whilst he was drunk and to take into account the period the accused has been in custody. It was further submitted that the accused has been left with four children and he does not know where they are living. The accused is capable of reforming if he is handed a noncustodial sentence as he will enrol in an anger management class as part of his reform measures. Reliance was made in the case of R versus Juliana Wanza Mulei [2020] eKLR where an accused who pleaded guilty to manslaughter was sentenced to 2 years imprisonment. Counsel submitted that the accused should serve a rehabilitative prison sentence and not a probationary one.

5. I am guided by the judiciary sentencing policy guidelines of 2023. I have considered the facts which were in brief that the accused and the deceased fought on the material day, the accused hit the victim with a stick on the head and she began to bleed she died the next day. The post-mortem report indicates that the deceased had severe head injuries as a result of blunt-force trauma. A life was lost. The accused blames the alcohol and claims they were both drunk. An individual's actions have consequences. I note that the victim's family has forgiven the accused and that he has been in custody since November 2023. The plea bargain was entered agreement into after the court heard the evidence of three witnesses. The sentence provided in law for the offence of manslaughter is life imprisonment.
6. I take note of the period the accused has been in remand from the time he took plea on the 15<sup>th</sup> of November 2023. In compliance with section 333(2) of the Criminal Procedure Act, the said period shall be taken into account by the prison authorities whilst computing his sentence. I sentence Moses Tutei Nakitari, the accused person, to serve ten ( 10) years imprisonment. Right of Appeal explained.

**DATED SIGNED AND DELIVERED AT BUNGOMA THIS 11<sup>TH</sup> DAY OF FEBRUARY 2025.**

**R. OUGO**

**JUDGE**

In the presence of:

Moses Tutei Nakitari / Accused

Miss Matere For the State

Mr Wekesa For the Accused.

