



**Director of Public Prosecution v Naliaka (Criminal Case  
E019 of 2023) [2024] KEHC 1297 (KLR) (8 February 2024) (Sentence)**

Neutral citation: [2024] KEHC 1297 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE E019 OF 2023  
SC CHIRCHIR, J  
FEBRUARY 8, 2024**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTION ..... REPUBLIC**

**AND**

**BEATRICE NALIKA ..... ACCUSED**

**SENTENCE**

1. The accused herein was charged with murder contrary to section 203 as read with section 204 of the *penal code*. She later entered into plea bargain with the state, resulting in a plea bargain agreement in which she pleaded guilty to the lesser charge of manslaughter.
2. A pre-sentencing report was prepared and the accused made submissions through her advocate.
3. It is the accused's submissions that she is remorseful. That the offence was not premeditated and prays for lenient sentence.
4. The prosecution did not make any submissions.
5. I have perused the pre-sentencing report. The report indicates that the accused and the deceased, were husband and wife, and the union was characterized by frequent fights .
6. It is reported that the accused has accepted her fault and seeks for forgiveness. She is further reported to have had no history of violence.
7. The victim's family is however, unforgiving. They fault the accused for locking the door from outside after attacking the deceased, arguing that the deceased may have tried seeking for help were it not for the fact that the Accused locking the door from outside, as she made her escape.



## Determination

8. I have considered the Accused mitigation as well as the findings of the probation officer.
9. The accused is remorseful. She is a first offender. According to the provisions of paragraph 23.8.8 and 23.8.7 of the Kenya [Judiciary sentencing policy guidelines](#), the above are mitigating factors. I also noted that the accused has pleaded guilty at the earliest, albeit, to a lesser charge. She cooperated with the investigators from the onset by presenting herself at the police station and recording cautionary statement, in which she readily admitted to the offence.
10. According to paragraph 23.8 of the [sentencing guidelines](#), cooperation with the investigators and prosecution are also mitigating factor.
11. I have also taken in into consideration the circumstances of the offence. From the cautionary statement, it came out that the accused was acting in self- defence.
12. From her statement, there was a dispute with the deceased over sex. A dispute arose when the accused asked the deceased to allow her to first put the baby to sleep before the couple could have sex. The deceased became angry. He took a panga and raised it in an attempt to cut the Deceased. The accused overpowered him, took over the panga and cut the deceased, instead.
13. Am alive to the fact that there is only one version of what transpired between the two that night. However, the accused's subsequent conduct impresses me as a credible person. After travelling most of the night to reach her grandmother's house, she immediately confessed her crime to the grandmother. she also admitted the same to her mother when the mother arrived later in the day. She presented herself at the police station and made a voluntary confession. Therefore I have no reason to disbelieve her on her explanation as to what led to her fatally injuring the Deceased.
14. Further, the presentencing report indicate that the couple used to have frequent fights. It therefore lends credence to the accused's statement to the effect that, the deceased turned violent, when he felt that he was being denied sex.
15. I have no reason therefore to doubt that the accused acted in self defence.
16. However, the Accused used excessive force. By her own admission, the deceased appeared drunk. Thus, if indeed she observed that he was drunk , she need not have cut him on the neck in order to overpower him. The post -mortem report (PEXB1) shows that the cut on the neck was 30cm long. she also cut the deceased on both shoulders, right forearm and left leg. The deep cuts led to excessive bleeding, causing death. The accused must have realized that cutting the deceased on the neck could potentially kill him. On the other hand, if she did not realize it, it may be indicative of an unbridled anger on the part of the Accused, which calls for deterrence.
17. It must not also be lost to this court that a life was lost.
18. Taking into consideration both the mitigating and aggravating factors, I am of the view that the mitigating factors in this case outweigh the aggravating ones.
19. Accordingly, I hereby sentence the accused to 7 years in prison. The sentence will take effect from the date of conviction.
20. Right of appeal 14 days.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 8<sup>TH</sup> DAY OF FEBRUARY, 2024**

**S. CHIRCHIR**



## **JUDGE**

In the presence of;-

Godwin- Court Assistant

The Accused.

Ms Chala for DPP

