



**Republic v ANN (A Minor) (Criminal Case 10 of 2019)
[2024] KEHC 2591 (KLR) (12 March 2024) (Sentence)**

Neutral citation: [2024] KEHC 2591 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE 10 OF 2019
RM MWONGO, J
MARCH 12, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ANN (A MINOR) ACCUSED

SENTENCE

Background

1. A N N. the subject, was aged 12 years on 7th March 2019 when she was charged with the murder of CWN, a child aged 1½ years. Under our law, A N N is a minor. The particulars of the offence are that she murdered the victim at Kabati Estate in Naivasha sub-county whilst working as a house help.
2. After close of the prosecution case, this Court found that A N N had a case to answer. She gave sworn testimony in her defence. On 7th November, 2023 this Court found her guilty of murder but determined that she had no malice aforethought. She was thus convicted for the lesser offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*.
3. On account of the fact that the subject was a minor, the court directed that the Probation Officer do avail a Probation and Aftercare Report. In particular, following the request of the Probation Officer, the Court ordered that the Report contain an “assessment to ascertain the offender’s evolving capacity and learning ability at the Disability Resource Information Centre Naivasha” to guide the Court in making a proper recommendation for sentencing.
4. During the trial and in the judgment, this court referred to the offender as the Accused. It should not have been so. This is a case of a minor in conflict with the law. All reference to the minor as Accused in the trial proceedings, are hereby struck off and substituted with the words “offender”, “minor” or “subject”. Similarly, the case name shall henceforth be referred as R. v A N N (A Minor) in order to



protect the privacy and identification of the minor to the public pursuant to Section 220 (2) of the [Children Act](#), 2022.

Mitigation hearing

5. The mitigation hearing came up on 15th February, 2024. Counsel for the subject submitted along the following lines.
6. On the criminal liability of the subject, counsel cited Section 221 (2) of the [Children Act](#) 2022, which provides:
 - (2) A child who commits an offence while under the age of fourteen years shall be presumed not to be capable of differentiating between right and wrong, unless the Court is satisfied on evidence to the contrary.
7. Counsel pointed out that the accused was 12 years old at the time of the offence, and that the evidence on record does not confirm whether or not she understood what she was doing.
8. He also cited Section 238 (1) of the [Children Act](#) 2022 which provides that:

“No court shall order the imprisonment of a child.”
9. Noting that the court had found that the subject was aged 12 years at the time of commission of the crime and was now 17 years old, she was still a minor. The court therefore has to exercise leniency according to counsel.
10. Counsel invoked Section 239 (1) (a) of the [Children Act](#) which provides for the situation where a child is tried for an offence, and the Court is satisfied as to their guilt. In such a case, the Court may deal with the subject in one or more of the following ways; in particular, it may discharge the child under section 35(1) of the [Penal Code](#).
11. The defence thus submitted that the accused should be discharged under section 35 (1) of the [Penal Code](#).
12. Finally, counsel stated that the minor had offered an apology to the deceased’s family; and that she had not known that the baby in her care had died.

Prosecution

13. The prosecution stated that it would rely wholly on the probation report.

Issues for Determination

14. This being a sentencing hearing, the only issue is: what is the appropriate sentence for the court to mete on the offender.

Analysis

15. The Probation Officer’s Report dated 9th February 2014 found that the subject was fit for a non-custodial sentence. It recommended that she be placed on probation for a period of 2 years.
16. A N N is a minor. Therefore, the court in making any determination that affects her must have at its central object the best interests of the child. As earlier stated, she was convicted for manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#).



17. The maximum sentence for the offence of manslaughter under section 205 of the *Penal Code* is life imprisonment, and the accused person was a minor aged 17 years as at the time of conviction. However, Article 53 (1) (f) of the *Constitution* of Kenya, 2010 and the *Children Act* provide for restrictions on punishments applicable to children in conflict with the law.
18. Article 53 (1) (f) of the *Constitution* provides as follows:
- “Every child has the right, not to be detained, except as a measure of last resort, and when detained, to be held:-
- (i) for the shortest appropriate period of time; and
 - (ii) Separate from adults and in conditions that take account of the child’s age and sex.”
19. . The *Children Act* Section 239. (1) empowers the courts to exercise several options and provides for methods of dealing with children in conflict with the law, as follows:
- “Where a child is tried for an offence, and the Court is satisfied as to their guilt, the Court may deal with the case in one or more of the following ways—
- (a) discharge the child under section 35(1) of the *Penal Code*;
 - (b) discharge the child on his or her entering into a recognisance, with or without sureties;
 - (c) make a probation order against the offender under the provisions of the *Probation of Offenders Act*;
 - (d) commit the offender to the care of a fit person, whether a relative or not, or a charitable children’s institution willing to undertake the care of the offender;
 - (e) if the child is between twelve years and fifteen years of age, order that the child be sent to a rehabilitation institution suitable to the child’s needs and circumstances;
 - (f) order the child to pay a fine, compensation or costs, or any or all of them, having regard to the means of the child’s parents or guardian;
 - (g) in the case of a child who has attained the age of sixteen years, deal with the child in accordance with the *Borstal Institutions Act*;
 - (i) place the child under the care of a qualified counsellor or psychologist;
 - (j) order that the child be placed in an educational institution or vocational training programme;
 - (k) order that the child be placed in a probation hostel under the provisions of the *Probation of Offenders Act*;
 - (l) make a community service order”
20. The offender’s counsel submits that the subject, being 17 years old, is still a minor. The court has to be lenient. The defence submits that the subject should be discharged under section 35 (1) of the *Penal Code*.



21. The Probation Officer's Report shows the offender's family background and personal profile. The subject's Birth Certificate shows she was born on 10th March, 2006. She has had health challenges whilst in custody according to the Probation Report. She was treated at Nakuru Children Remand following chest complications. She has never taken drugs or alcohol.
22. She pleads for leniency and a second chance so she can continue with her secondary school education. That is an important aspect for the court to consider.
23. The subject's family is well known in the village and her conduct has been good in the community. The Administrators at Nakuru Children Remand also said she had been of good conduct. These sentiments are echoed by her family, and the headteacher at [Particulars Withheld] Primary School where she was said never to have had a discipline case.
24. The victim's family views could not be obtained despite efforts by the Probation Officer. The victim's father, though obtained on phone, said the mother had relocated abroad to Qatar. She could not be reached on phone.
25. The Probation Officer noted that from various inquiries with the family and teachers, the subject has had challenges with learning. She may well be traumatized. The Probation Officer recommends that the subject can attend school whilst under supervision; and that she is fit for a non-custodial sentence and may be placed on probation for a period of 2 years.
26. I have also perused and internalized the [Judiciary Guidelines on Sentencing](#). In particular paragraph 20 (especially 20.1) and 23.8.5 of the Guidelines are taken into account.
27. Taking all the above matters into consideration, the best interests of the child stand paramount. Accordingly, I hereby sentence the offender to a non-custodial sentence. She will be placed on probation under the supervision of the Probation Officer for two (2) years on the conditions herein.
28. During the probation period the offender shall:
 - a) Attend school on a regular basis;
 - b) Attend instruction, counselling and rehabilitation programmes designed and facilitated by the Probation Officer;
 - c) Should the offender fall afoul of the law during the period of probation, the Probation Officer shall report the matter to the court where upon the court may enhance or alter the offender's sentence herein.
29. The Probation Sentence has hereby been explained to the offender pursuant to Section 4 (2) & (3) of the [Probation Offender's Act](#) Cap 64, which sentence the offender consents to.
30. Orders accordingly.

DATED AND DELIVERED ONLINE FROM KERUGOYA HIGH COURT THIS 12TH DAY OF MARCH, 2024.

R. MWONGO

JUDGE

Delivered in the presence of:

1. Offender - A N N Present in Nakuru Remand Home
2. Bagongo - for the Subject/Offender



3. Abwacho - for the State

4. Quinter - Court Assistant, Naivasha High Court

