



**Republic v Mwangi (Criminal Case E065 of 2021)
[2024] KEHC 2085 (KLR) (Crim) (4 March 2024) (Sentence)**

Neutral citation: [2024] KEHC 2085 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE E065 OF 2021**

K KIMONDO, J

MARCH 4, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

NANCY NJERI MWANGI ACCUSED

SENTENCE

1. The accused pleaded guilty to the lesser but cognate offence of manslaughter under a plea agreement recorded on October 26, 2023.
2. The facts here are truly tragic. On the morning of August 19, 2021, the accused was left to mind a young boy, John Harris (hereafter the deceased) who was then aged two and a half years. The child was the son of the accused's sister, Faith Mugendi.
3. At about 10:00 a.m., Michelle Mwambua, who resided at an adjacent plot saw the accused pacing up and down, kicking the boy, stepping down on him, throwing him against a wall and finally tossing him outside the gate.
4. She screamed attracting other people to the compound. The responders rushed the deceased was to Pine Comprehensive Clinic, 50 metres from the scene where he was pronounced dead. The irate members of the public wanted to lynch the accused but noted that she was acting strangely: she was marching like a soldier and adorning ties. They frog marched her to Soweto Police Station, Kayole.
5. The body of the deceased was taken to Mama Lucy Kibaki Hospital mortuary. According to the autopsy conducted by Dr. David Atandi and dated 25th August 2021 (exhibit 1), the cause of death was "severe head injury due to blunt force trauma".



6. I have considered the mitigation tendered by the accused's counsel, Ms Karuga, and the pre-sentence report dated January 30, 2024 by Mary Abima, Probation Officer. Learned counsel for the accused prayed for a lenient or non-custodial sentence.
7. The accused is 26 years and a first offender. She is remorseful and beseeches the court for an opportunity to re-integrate with the community. When the mother of the deceased asked her why she had assaulted the deceased, she claimed that she was possessed by demons.
8. There is some evidence that the accused was injured in a road traffic accident not long before the incident. The initial medical report by Dr. Kemunto, consultant psychiatrist, dated 30th August 2021 as well as the pre-sentence report above confirm that the accused had "acute psychotic episode in catatonic state" at the time of the incident and has been on medication.
9. I should clarify that a subsequent medical examination by Dr. Alfred Gitonga, dated June 21, 2022 confirmed that the accused "had since become capable of making her defence" and which led to the plea bargaining. Her immediate family, who now double up as the victim's family, have reconciled with her and are not opposed to an early release.
10. Sentence should be commensurate to the moral blameworthiness of the offender but also guided by the nature and gravity of crime. Manslaughter is grave offence and attracts a sentence of up to life imprisonment. An innocent life of a young child was lost in a moment of sheer madness. In all the circumstances of this case, I find that justice will be served by a mixed sentence comprising of a short custodial sentence followed by a probation order. This will afford the accused an opportunity to introspect, reform and continue with medical treatment.
11. The accused shall first serve three (3) years' imprisonment. The imprisonment shall run from 19th August 2021, the date when she was arrested and placed in custody. Thereafter, she shall be released on probation for a period of two (2) years under the care of the relevant probation officer to be appointed by the Probation and After-care Services.
12. As a further condition, the accused shall continue with psychiatric treatment and faithfully take medication for her psychotic condition. In addition, and in accordance with section 4 (3) of the *Probation of Offenders Act*, she must not commit another offence during her probation, in default of which she will be re-sentenced for the present offence.
13. The accused has a right of appeal to the Court of Appeal within 14 days and as per the Rules of that Court but only on the sentence. A copy of the proceedings shall be supplied to her immediately.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF MARCH 2024.

KANYI KIMONDO

JUDGE

Sentence read virtually on Microsoft Teams in the presence of-

The accused.

Ms. Ndombi for the Republic instructed by the Office of the Director of Public Prosecutions.

Ms. Karuga for the accused.

Mr. E. Ombuna, Court Assistant.

