



**Republic v ZJ (Criminal Case E023 of 2022) [2024] KEHC 1897 (KLR) (1 March 2024) (Order)**

Neutral citation: [2024] KEHC 1897 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL CASE E023 OF 2022  
JRA WANANDA, J  
MARCH 1, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ZJ ..... SUBJECT**

**ORDER**

1. At the time of taking plea in the year 2022, the Subject was about 14 years old and is currently about 16-17 years. He is therefore categorized as a “child”.
2. Under Section 237 of the *Children Act*, the words “conviction” and “sentence” are not to be used of a child when handling a criminal matter.
3. The Subject was charged with the offence of murder contrary to Section 203 as read with Section 205 of the *Penal Code*. The particulars of the offence are that on 21/06/2022 at [Particulars withheld] village in [Particulars withheld] Sub County within Uasin Gishu County in the Republic of Kenya, he unlawfully killed Stephen Wafula Wekesa. The Subject was represented by Ms. Isiaho Advocate. He pleaded not guilty on 21/07/2022 and the matter was set down for hearing.
4. The Subject does not have a Certificate of Birth but an age assessment test placed his estimated age at the time of plea-taking at about 14 years. Today he must therefore be about 16-17 years old.
5. Subsequently, the Subject plea-bargained with the Prosecution and the murder charge was dropped and substituted with the lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*. He pleaded guilty to the lesser charge of manslaughter and the Court set down a hearing date for the plea-bargain.
6. For record purposes, I may just mention that as required under Section 137A of the *Criminal Procedure Act*, before the Court recorded the plea-bargaining Agreement, the Subject was placed under oath and all the requirements listed under that Section were duly observed, including informing



the Subject of all his rights and carrying out the necessary inquiries on whether he entered into the Agreement voluntarily and with no compulsion from any person. Only after satisfying itself of all these matters and also that the Subject was competent to enter into the Agreement and was of sound mind did the Court record and adopt the Agreement.

7. The Subject's Advocate, Ms Isiaho signed the plea-bargaining agreement on behalf of the Subject who pleaded guilty to the information and a plea of guilty was then entered against him. The facts of the case were read out to him in the Kiswahili language which he understood and he admitted the facts as being true. The Court then proceeded to convict him accordingly, for the offence of manslaughter.
8. During mitigation, State Counsel Ms Okok, appearing for the Prosecution informed the Court that the Subject be treated as a first offender that the families of the deceased and the Subject were related, that the family of the deceased had forgiven the Subject and have been living peacefully. She submitted that looking at the circumstances of the case, a custodial sentence will suffice, that the Subject is 16 years old and that he should be given a chance to rebuild his life. She recommended a probation period of about 2 years.
9. On her part, Ms. Isiaho in tendering mitigation on behalf of the Subject, also submitted that the subject is a first offender, that he is remorseful, that he is a child according to Section 12 of the [Children's Act](#) and he has been psychologically affected by the incident, and that he has been well behaved while out on bond. She highlighted that the Subject assisted in taking the deceased to hospital after the incident and urged the Court to sentence him to a non-custodial sentence.
10. There was also a pre-sentence Report filed by the Children's Officer on 20/06/2022.
11. I will now outline the facts as read out by the Prosecution on 19/01/2024.

#### **Facts of the case**

12. On 21/06/2022 at around 7.30 pm, the Subject, one Alvin Kibet and the deceased were at home carrying out their evening studies. The Subject is the uncle to both Alvin Kibet and the deceased. The Subject and Alvin were teaching the deceased how to read and write alphabets. The deceased was six years old at the time. The deceased could not read the alphabets properly and this agitated the Subject who took a stick which he used to beat the deceased on several parts of his body including the head. The deceased became ill and was unable to take his evening meal. He only requested for milk but which he only drunk a small portion thereof. After a while, he fell down and became unconscious. Noticing what had happened, the Subject sought the help of his elder brothers - Yusuf Kibet and Harrison John - who rushed the deceased to Kaptik dispensary where he was pronounced dead on arrival. The brothers took the body back home as the dispensary did not have a facility to keep it for preservation. The following morning, the deceased's grandfather reported the matter to Moiben Police station. The officers visited the scene, collected the body and took it to Iten County Referral Hospital. On 4<sup>th</sup> July 2022, the post-mortem was conducted to ascertain the cause of the death of the deceased and the same was confirmed to have been head injury due to blunt force trauma. On 14<sup>th</sup> July 2022 the Subject was charged with the offence of murder which as aforesaid, the State later substituted with one of manslaughter. The Subject admitted the above facts to be true and was convicted accordingly.
13. I then allowed the father of the Subject to address the Court on the issue during mitigation. He informed the Court that the father of the deceased is also his son but he is also deceased. That the deceased had been living with them as the mother of the deceased left after the death of the deceased's father.



14. As aforesaid, the prosecution submitted that the Subject was a first offender. In the Children’s Officer’s Report, Senior Children’s Officer, Mr. Joel K. Kaino, stated that there is no threat of revenge by any party.
15. Under Section 238 of the *Children Act*, no Court shall order the imprisonment of a child and notwithstanding the nature of any offence punishable by death, and no Court shall impose the death penalty on a child on a finding of guilty for such an offence.
16. Under Section 239(1) of the *Children Act*, the methods of dealing with children in conflict with the law are listed as follows:
  - “(1) 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* (Cap. 63);
    - (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*;
    - (h) place the child under the care of a qualified counsellor or psychologist;
    - (i) order that the child be placed in an educational institution or vocational training programme;
    - (j) order that the child be placed in a probation hostel under the provisions of the *Probation of Offenders Act*;
    - (k) make a community service order;
    - (l) make a restorative justice order;
    - (m) make a supervision order;
    - (n) make any other orders of diversion provided for in this Part; or
    - (o) deal with the child in any other lawful manner as may be provided under any written law.
17. Sub-section (3) then provides that “in addition, or as an alternative, to the orders prescribed in subsection (2), the Court may impose on a child such other sanctions as the Court may consider just”.
18. On its part, sub-section (6) provides that “the orders imposed on a child upon a finding of guilt shall be proportionate to the circumstances of the child, the nature of the offence and the public interest,



and a child shall not be treated more severely than an adult would have been treated in the same circumstances.”

19. The circumstances under which the offence was committed are quite unfortunate and sad. The deceased and the Subject were from the same family and were both children. It is evident that the Subject never intended to kill the deceased and his death was unfortunately the result of excessive force used with the intent to discipline the deceased while teaching him. Having considered all the circumstances under which the offence was committed, taking into account the age of the offender at the time of the offence, the mitigation by his Advocate, oral statements by his father and the Children’s Officers’ report, I find that a non-custodial sentence would be sufficient in the circumstances.
20. In reaching the above verdict, I have also considered that all description of the Subject in this case, from the Mental Assessment Report to the Pre-Sentence Report, all paint the picture of the Subject as a well-behaved boy with no history of aggression or indiscipline. The family is also said to be poor and lives from hand to mouth, they do manual jobs to meet their daily needs. The Subject is also visibly remorseful and pained by what happened. He is definitely disturbed and shall require psychological therapy from a qualified professional.
21. Noting that the Subject was out on free bond during the hearing, I hereby exercise discretion and sentence the Subject to two (2) years’ probation to be calculated to run from the date of this sentence.
22. In addition, I hereby commit the Subject JZ to the care of his father JW who shall take care of him and ensure that he continues with his schooling and reports to the Probation officer in-charge of this region for the period of two (2) years that the Subject shall be on probation without fail and as shall be directed by the Probation Officer

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 1<sup>ST</sup> DAY OF MARCH 2024**

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**WANANDA J.R. ANURO**  
**JUDGE**

