



**Republic v Wangila (Criminal Case E038 of 2021)
[2024] KEHC 4244 (KLR) (9 April 2024) (Sentence)**

Neutral citation: [2024] KEHC 4244 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E038 OF 2021
RN NYAKUNDI, J
APRIL 9, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

AMBROSE NYONGESA WANGILA ACCUSED

SENTENCE

1. Ambrose Nyongesa Wangila in the 1st instance faced a charge of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The brief particulars being on the diverse dates between 15th and 16th of April 2021 at Chepkigen in Langut sub location Kasses sub county within Uasin Gishu County murdered Phostine Nekesa Juma . Having pleaded not guilty the matter was set down for hearing pursuant to Art. 52(a) of the *Constitution*. However, during the pendency of the trial the defence Legal Counsel M/s Koech on behalf of Ambrose Nyongesa the accused herein filed a motion addressed to the state to have the charge reduced with that of Manslaughter contrary to section 202 as read with Section 205 of the *Penal Code*. This was under the scheme of Section 137 (A)-(O) of the *Criminal Procedure Code*. The plea bargaining negotiations culminated into a plea agreement which was signed by both parties on 13.3.2024. The plea bargaining agreement was administered to Ambrose Nyongesa on 9th April 2024. Consequently, Ambrose Nyongesa admitted the lesser offence of Manslaughter and on all the elements being proven by the state he was found guilty and convicted within the aforesaid provisions.
2. It was now the task of this court to exercise discretion to pass an appropriate sentence. A statement of purpose was filed by Legal Counsel M/s Koech on mitigation highlighting inter-alia that Ambrose Koech is a fist offender aged 36 years and a family man with children who by virtue of this trial are now orphaned. It was the submissions by learned counsel that the circumstances of the offence are deducible from the plea bargaining agreement in so far as the conflict was initiated and escalated by the deceased who happened to be the spouse though at the time they were living apart from the



matrimonial home. Learned counsel urged this court to be guided by the principles in the case of *Republic v Isaac Murumba* (2021) eKLR. Learned counsel proposed a term of 6 years imprisonment. The lead prosecution counsel Mr. Mugun in answer to the above question submitted on aggravating factors, the nature and gravity of the offence which raises the bar on the punishment the court should be inclined to impose against Ambrose Nyongesa. The learned prosecution counsel proposed a period of 10 years imprisonment with a credit period being given under Section 333(2) of the *CPC*. In addition to the submissions to the legal counsels a pre-sentence report had been filed capturing the family background, personal history, circumstances of the offence, attitude towards the offence by Ambrose Nyongesa, views of the victim and community attitude towards the offence and the offence committed.

3. I have considered the whole of that material and it is now time to give effect to the context of sentencing Ambrose Nyongesa as per the law established within the text of Section 205 of the *CPC*.
4. First and foremost, sentencing is a judicial process and it is societies response and legitimate expectation that a breach of a penal laws and once found guilty a fair and proportionate sentence in relation to the crime should be meted out by our courts. The legislative statement of purpose on punishment is well laid out in the various statutes as a significant component of a functioning democratic society based on the rule of law. The Kenyan sentencing policy guideline released in 2023 as the most detailed, extensive and empirical information for trial courts to adopt in exercising discretion at various levels. The fundamental purpose of sentencing that can be pursued as per the policy and applied one or more of the objectives include:
 - a. Denunciation
 - b. Deterrence
 - c. Separation
 - d. Rehabilitation
 - e. Reparation
 - f. Offender-victim-community restoration
 - g. Proportionality
5. In addition to the above objectives are key front principles which must also find their way to the sentencing regime of trial judges as against the convicted persons under their watch. Therefore, the importance of the principle of parity, totality, should assist the sentencing Judge exercising discretion to increase or reduce the sentence in accordance with the existence of aggravating and mitigating factors.
6. The Court of Appeal in *Thomas Mwambu Wenyi v Republic* (2017) eKLR cited the decision of the Supreme Court of India in *Alister Antony Pereira v State of Maharashtra* at Paragraph 70-71 where the court held the following on sentence “Sentence is an important task in the matter of crime. One of the prime objective of the criminal law is imposition of appropriate, adequate just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles. Twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing he crime doer. The court has to take



into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.

7. Practically, from the facts of the case this is a gender based violence offence in which the spouse to Ambrose Nyongesa the convict lost his life arising out of a domestic fight. It is therefore expected of the court to look at the conduct of the convict from the lens of the gender based violence class of offences. However, the information received by the court which has a direct impact on the aggravating factors, include a guilty plea entered under plea bargaining agreement which does merit reduction of sentence. The justification for that reduction of sentence includes the following.
 - a. It is in the public interest as it saved the courts time and expense in conducting a full trial
 - b. It avoids the possibility of an accused securing and unmerited acquittal through a technical or procedural error
 - c. It is also an indication of contrition which qualifies him for lenience from the court and a milder sentence.

“it is generally, if not universally recognized that an accused pleading guilty to an offence with which he is charged, qualifies him for the exercise of mercy from the court. The reason is, I thin obvious, in that one of the main objects of punishment is the reformation of the offender. Contrition is the first step towards reformation, and a confession of a crime, as opposed to brazening it out, is an indication of contrition. Therefore, in such a case, a court can and does impose a milder sentence than it would otherwise have done. Most importantly for this case is the evidence surrounding the children of the convict who have been orphaned by this offence. Therefore, the means of their survival rights is dependent upon their biological father who for circumstances finds himself in the thickest of things of having killed his spouse the mother of his children. The constitutional imperative in Art 53(2) of the Constitution for the courts to protect and guarantee a child’s best interests cannot be under estimated. Those interests are of paramount importance in every matter concerning the child. In Art 3(1) of the CRC which also found its way to our children’s Act provides as follows: “ In all actions concerning children whether undertaken by public or private social welfare Institution , courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration. The Art. defined that substantive right as being: “ The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general.

8. Despite the magnitude of the problem, in our Criminal Justice System more particularly the sentencing legal framework which involves children as victims of the offence, there is much the justice system can do to assist in reducing the degree to which children rights and their best interest can be at risk. What can and must be addressed though is the role sentencing judges and magistrates can play in remedying injustice against the children of Kenya. Take the case here where the only serving parent is exposed to a lengthy term imprisonment which directly and indirectly would deny the basic rights of his own children. The sentence process where children are involved as victim is therefore an appropriate forum for addressing the welfare and best interest of a child.



9. It is therefore necessary to consider what sentences guaranteed in the circumstances. I have focused among other things on the actual incident giving rest to the breach of the right to life under Art.26 of the Constitution against the spouse to the convict. Taking into account the relevant sentencing principles and objectives, the fact that the convict is a first offender and he pleaded guilty to the offence of manslaughter, that during the pendency of his trial he has been in pre-trial detention as to turn in the provisions of Section 333(2) of the CPC a sentence of six (6) imprisonment is imposed to be served by the convict. The committal warrant shall take into account the computed period of credit with effect from 29.4.2021.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 9TH DAY OF APRIL 2024

R. NYAKUNDI

JUDGE

In the presence of

Mr. Mugun for the State

The Accused

