



**Republic v MWN (Criminal Case E010 of 2023)  
[2024] KEHC 5831 (KLR) (21 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 5831 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL CASE E010 OF 2023**

**GL NZIOKA, J  
MAY 21, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**MWN ..... ACCUSED**

**SENTENCE**

1. MWN, aged 17 years old (herein “the subject”) was charged in court with the offence of murder contrary to section 203 as read with section 204 of the Penal Code (cap 63) Laws of Kenya. The particulars of the offence read that, on the 2<sup>nd</sup> day of July 2023, at Karagita Estate within Naivasha Sub County within Nakuru County he murdered Brenda Bosibori Zablou.
2. He pleaded not guilty to the charge and the case was set down for hearing. However, the parties subsequently engaged in plea bargain negotiation, and subsequently executed a plea bargain agreement wherein the charge was reduced from murder to manslaughter contrary to section 202 of the Penal Code.
3. On 9<sup>th</sup> April, 2024 the charge of manslaughter was read to the subject and he pleaded guilty thereto. A plea of guilty was entered. The facts were then read out to the subject and he confirmed that, the same were correct in total. He was then convicted on her own plea of guilty. The court then ordered for a pre-sentence report and the subject’s record of previous conviction (if any) or an indication of being a first offender.
4. The prosecution availed records from the Identification Bureau indicating that, the subject is a first offender. The probation department filed a pre-sentence report. The defence the offered the mitigation on sentence.
5. I note from the pre-sentence report that, the subject was brought up in a slum dwelling. It is indicated he peddled and smoked bhang. Further he was expelled while in form 2 at [Particulars Withheld] High



School. He then transferred to [Particulars Withheld] High School where he was also expelled twice for breaking school rules. That the first time he was expelled after being found smoking bhang but was readmitted on condition that he undergoes counselling. Further, the second time, he was expelled for being in a romantic relationship with the victim herein and he promised to change but continued with relationship secretly. Furthermore, he allegedly broke the windows of his mother's house as she disapproved of his character of smoking bhang.

6. That he admitted that he was addicted to betting and watching horror movies. That, after his arrest he developed strong Anti-Christian attitude and does not want to hear the mention of God, Jesus or the bible.
7. Further, the Area Chief and other community gate keepers described him as "very serious" and stated he would have been killed by a mob if he had not escaped to the police station and therefore it was not safe if he is released on a non-custodial sentence.
8. The mother of the victim insisted that her daughter was murdered in cold blood and the murderer should not be shown any mercy. That the family as a whole is totally opposed to a non-custodial sentence. Further, the emotion of the loss is too much and insisted on justice for the victim and prayed for the most severe sentence.
9. The report noted that, the subject insists that he did not want to kill the victim. He is remorseful and begs the court for leniency.
10. The Principal Probation Officer, Mr. Kamau Joel, recommends that the subject be admitted to Shikusa Borstal Institution for a period of three (3) years where his safety will be guaranteed, and rehabilitation will take place. Further, his drug and substance abuse habits will be addressed in addition to anger management.
11. I have also considered the mitigation tendered by the defendant to the effect that he is remorseful. That this was an accidental death as he had no intention to kill the deceased. That there was a disagreement. That the court considers the circumstances of the offence and gives him a non-custodial sentence. Furthermore, he has been in custody for almost a year and is a first offender.
12. I have considered this matter in the light of the objectives of sentencing as stated under clause 1.3 of the *Sentencing Guidelines* (2023), being retribution, deterrence, rehabilitation, restorative justice, community protection, denunciation, reconciliation and reintegration. It is noteworthy that rehabilitation is meant to enable the offender reform from his criminal disposition and become a law-abiding person however, the offender's attitude is key.
13. The aforesaid content of the pre-sentence report and mitigation notwithstanding, the circumstances of the offence reveal that, the offence occurred after the subject and victim had sexual relations and the subject discovered that his money Kshs. 2000 was missing. He blamed the victim and a quarrel ensued and he took a shoe lace, tied it around the victim's neck and strangled her. The post mortem revealed that, the cause of death was asphyxia due to neck compression, manual strangulation.
14. Pursuant to the aforesaid, is it true that the subject only wanted to threaten the victim but strangled her to death. Would someone kill a person that he claims to care about over Kshs. 2,000. It is noteworthy that, the subject took a shoe lace and placed it on the neck of the victim and thereafter took a black cable that he used to form a sliding knot and proceeded to strangle her.
15. The court notes that, the subject's character comes out as a person with uncontrolled anger. There is no indication that he has undergone any psychological training on managing the same. The pre-sentence does not indicate the same. Further, his attitude has not changed the report indicates he has developed



an Anti-Christian attitude as he does not want to hear the mention of God, Jesus or the bible stating that God abandoned him and that is why he is getting into trouble. It is clear that he has not done a deep reflection and/or introspect as he does not own up to his mistake but choose to state that God abandoned him.

16. Furthermore, in a case of this kind, the voice of the victim is silent. The version of events as they occurred remain one sided unless there is a witness. Further still, the deceased deserves justice from her grave. She died in a very painful and cruel way and thereafter her body was dumped her body by the roadside. A life was lost permanently and prematurely while still in form 2. It is evidence that the victim's family are bitter and are grieving and need counselling and social support. They are opposed to a non-custodial sentence and are asking for a severe punishment.
17. I find the recommendation appropriate in the given circumstances of this case as the subject is a minor and order that he be committed to Shikusa Borstal Institution for a period of three (3) years. Further, after release he should be placed on probationary services for a further period of one (1) year to enable re-integration in the society.
18. It is so ordered.
19. Right of appeal explained within fourteen (14) days.

**DATED, DELIVERED AND SIGNED THIS 21<sup>ST</sup> DAY OF MAY 2024.**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:

The accused present physically

Mr. Owour for the accused

Mr. Abwajo for the State

Ms. Ogutu: Court Assistant

