



**Republic v Nyakimare (Criminal Case 2 of 2020)  
[2024] KEHC 5508 (KLR) (21 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 5508 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL CASE 2 OF 2020  
GL NZIOKA, J  
MAY 21, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MERCYRITA WANJIRU NYAKIMARE ..... ACCUSED**

**SENTENCE**

1. Mercyrita Wanjiru Nyakimare 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 12<sup>th</sup> day of December 2019, she murdered Kevin Kuria Wanjohi at Garofa village in Gilgil Sub County within Nakuru County.
2. She pleaded not guilty to the charge and the case was set down for hearing. However, the parties subsequently engaged in plea bargain negotiation. Subsequently a plea bargain agreement was executed by the parties wherein the charge was reduced from murder to manslaughter contrary to section 202 of the Penal Code.
3. On 1<sup>st</sup> August, 2023 the charge of manslaughter was read to the accused and she pleaded guilty thereto. A plea of guilty was entered. The facts were then read out and the accused confirmed that, the same were correct in total. She was then convicted on her own plea of guilty. The court then ordered for a pre-sentence report and the accused'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 accused is a first offender. The probation department filed a pre-sentence report. The parties and in particular the defence adduced the court in mitigation.
5. I note from the pre-sentence report that, the accused is said to have committed the offence when she was drunk and following a disagreement with the victim whom she was staying with as husband and



wife. That the community, family members and the victim's father were not opposed to her release on a non-custodial sentence. That the offence traumatizes her and she regrets having committed the same. Further she pleads for court's leniency.

6. However, the court noted that, the views of the victim's family were not clear. The father was quoted as having said that, even if the accused was sentenced to 100 years, his son would not come back to life. In that regard, the victim's family members were summoned to court to explain their clear position or views on sentence. The deceased's mother and father attended court. It was evident that the parents of the victim were still in pain indicating that, they lost their only son. That although they had met the parents of the accused, the pain of loss of their son lingers on.
7. I also have considered the mitigation tendered by the defendant, that, the accused is a first offender and that she got a child with the deceased when she was 18 years and the child is under her care. Further she is a single mother, unemployed and takes care of her child. That the offence occurred when she was drunk and she is remorseful. The defence sought for a non-custodial sentence as the pre-sentence report is favourable.
8. The aforesaid content of the pre-sentence report and mitigation notwithstanding, the circumstances of the offence reveal that, the offence occurred when allegedly both the accused and deceased were drunk. That the two quarrelled and a struggle ensued. The facts reveal that accused was enraged by the remarks allegedly made by the deceased to the effect that, his former girlfriend was better than her.
9. It suffices to note that, the accused is said to have torn the deceased's shirt who overwhelmed him. The accused was 20 years old while the deceased was 25 years old. Therefore to have overwhelmed the deceased, it indicates that most likely, the deceased was more intoxicated than her. Even, then as their fight proceeded to the bedroom, the evidence reveals, the deceased called the sister who was in the house, most likely to assist him as he was overwhelmed. However, the bedroom door was locked. Again, it is unlikely that, it is the deceased who locked the door. That the deceased's sister pushed the door, and saw the two struggling. She retreated to the kitchen.
10. It is noteworthy that, the accused went took a knife from the deceased's sister after overwhelming her, went held the deceased by the neck and stabbed him on the left chest. He fell down bleeding profusely and all the efforts to assist did not yield much, as he succumbed to death. The post mortem results revealed that, the cause of death was severe massive bleeding from penetrating chest injury due to single stab wound to the chest.
11. Pursuant to the aforesaid, several questions arise, namely was accused as drunk as she would like the court to believe and yet she was able to attempt to pack and leave, to lock the bedroom door, walk from the bedroom to the kitchen, when she had already subdued the deceased, overwhelmed his sister, grab a knife, hold the victim and stab him, and more so on the chest, occasioning a deep penetrating wound that led to his death?
12. Furthermore, nowhere in the facts is it indicated that, the deceased, injured the accused or she was injured in any way. The remarks by the deceased, cannot have been the only reason to end the deceased's life. The pre-sentence report indicates that, according to the offender's family, the deceased and accused were in a "violent relationship and would over indulge in alcohol", that the accused mother took over their 9 months old child.
13. In addition, the court notes that, the accused's character comes out as a person with uncontrolled anger. There is no indication that she has undergone any psychological training on managing the same. The pre-sentence doesn't indicate the same. The accused is still in the society and as the court metes out the sentence, it must take into account that the members of the society are protected. This is one of



the objectives of sentences. The other objective is deterrence. If the accused is allowed to merely walk out of court on a light sentence, then the court may be sending out a wrong message, “that alcoholism” is a defence to a serious charge such as manslaughter.

14. 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. For instant, it is not ascertainable whether indeed the deceased uttered the subject words herein or not. Further still, the deceased deserves justice from his grave. A life was lost permanently and it is evidence the victim’s family healing is still far. They have left the matter to court.
15. The scale of justice balances when justice is done. It is therefore not good enough to simply say “let’s pick the pieces and move on”. The mitigation given in that the accused is a single mother and needs to be allowed an opportunity to take care of her child holds minimal water, as the pre-sentence report reveals that, she neglected the child at age of 9 months and it is the mother who took the child and cares of it. Even now, it is indicated the child is with the mother.
16. The upshot of the afore is that I do not find this to be an appropriate case of a non-custodial sentence. In the entire incident, the accused had an opportunity to withdraw from the scene of crime. She did not. She needs to be given an opportunity of the society for reflection, counselling and anger management lessons. I therefore sentence the accused to a custodial sentence of seven (7) years, less the period of remission if any. It is so ordered and a right of appeal within 14 days explained.

**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. Gichuki for the accused

Mr. Abwajo for the State

Ms. Ogutu: Court Assistant

