



**Republic v Namayan Alias Etiir (Criminal Case E018 of 2023)
[2024] KEHC 5108 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5108 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL CASE E018 OF 2023
RN NYAKUNDI, J
MAY 9, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

LOPETA NAMAYAN ALIAS AKIRU ETIIR ACCUSED

RULING

1. Lopeta Namayan was charged with the offence of murder contrary to section 203 and 204 of the [Penal code](#), but the charge was reduced to manslaughter pursuant to a plea bargain agreement made on 2nd May, 2024. A plea of guilty was entered by the court on the said charge of manslaughter after the court accepted the plea bargain agreement in line with the provisions of section 137H of the [Criminal Procedure Code](#). The court was equally satisfied with factual basis and the accused's competence to voluntarily enter into such an agreement.
2. The prosecution was represented by Learned Counsel Mr. Kakoi while Mr. Ebenyo, represented the accused person. Mr. Ebenyo argued in his submissions that the accused person is of 35 years of age and being a fairly young woman, she is a perfect fit for a non-custodial sentence. She has the capacity and the advantage of time to be able to build her life once more and make better decisions for the good of his children and herself. Counsel further posited that the accused person has been in custody for almost one year. He urged the court to consider the time spent in custody as sufficient sentence served.
3. According to the accused person, she expressed remorse for her actions and regretful for the life lost, sorry to the family of the deceased for losing their loved one and prayed that this honorable court may consider her for a non-custodial sentence. That in the plea bargain agreement the prosecution proposed not less than two-year sentence. Counsel however urged the court to balance the proposals of the prosecution against the special circumstances of this case and if need be, sentence the accused person to a less than one-year sentence.



4. A Pre-sentence report was filed on 20th April, 2024 indicating that the Accused person is bitter and appears more concerned over the family's property that the victim's family raided from her home after her arrest. She is also worried and concerned about her children's welfare who have no one to take care of them. The probation officer indicated that from this he has not able to establish whether the offender is truly remorseful or more concerned about the family's livestock that was taken by the victim's family. It was also indicated in the report that the area chief is well aware of the matter and the offender is known to him. According to the chief, the community is fond of retaliation and would not recommend for the offender to return back to the community for now. The report therefore was not responsive.
5. The offence of manslaughter is punishable by a maximum sentence of life imprisonment under section 205 of the *Penal Code*. The sentence is however reserved for serious cases. In the Plea bargain agreement, the prosecution proposed a sentence of not less than 3 years and not more than 5 years. Life imprisonment in this case is therefore ruled out.
6. What is the appropriate sentence?

In the case of *State Of Madhya Pradesh v Mehtaab* cr Appeal no 290 of 2015, the Supreme Court of India had this to say: -

“It is the duty of the court to award just sentence to a convict against whom charge is proved. While every mitigating or aggravating circumstances may be given due weight, mechanical reduction of sentence to the period already undergone cannot be appreciated. Sentence has to be fair not only to the accused but also to the victim and society. It is also the duty of the court to duly consider the aspect of rehabilitating the victim.”

7. In determining the appropriate sentence, the Judiciary sentencing policy guidelines are instructive. They are not elaborate as to sentences involving manslaughter, but they give a roadmap which courts ought to consider in coming up with an appropriate sentence.
8. The sentencing objectives in Kenya have been captured in the Sentencing guidelines 2023 to be the following: -
 - a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - e. Community protection: to protect the community by incapacitating the offender.
 - f. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - h. Reintegration: To facilitate the re-entry of the offender into the society.



9. Additionally, in the “*Muruatetu Case*”, the Supreme Court outlined the following guidelines as being applicable when the Court was giving consideration to re-sentencing;

- “(a) age of the offender;
- (b) being a first offender;
- (c) whether the offender pleaded guilty;
- (d) character and record of the offender;
- (e) commission of the offence in response to gender-based violence;
- (f) remorsefulness of the offender;
- (g) the possibility of reform and social re-adaptation of the offender;
- (h) any other factor that the Court considers relevant.”

10. According to the facts of this case, the accused and the deceased are co-wives. They had been having quarrels over livestock. The efforts by their husband to reconcile them have been futile. On 30.0.2023, the accused was looking after her livestock when the deceased started hurling abusive words towards her. A fight started between the two. The accused together with her daughter attacked the deceased using clubs until she died.

the body was taken to Lodwar County and referral hospital where a post mortem was conducted. The doctor formed the opinion that the cause of death was “severe head injury with cerebral contusions and skull fracture due to assault”

11. In *V M K v Republic* [2015] eKLR ten years in jail was given for manslaughter. The trend has been that when the accused person uses a dangerous weapon in committing the crime, the court is likely to sentence the accused to life imprisonment. In the present case, the weapon used by

12. The right to be treated equally before the law as demanded in Article 27 of the *constitution* requires that factors irrelevant to the determination of a sentence be excluded from consideration. Some of these factors are as defined in sub section 4 include that no person should be sentenced more severely on account of their race, national or ethnic origin, colour, gender, sexual orientation, religion, age, mental or physical disability, or similar factors. Sentencing is one of the most complex and contentious functions of a trial court at the end of the trial upon conviction of an offender or on admission of plea of guilty of the charge. In general terms upon the proper extent of sentence discretion like the one I am about to exercise against the accused convict is clearly articulated in *R v Arcand* (2010) A.J no 1383. It is notorious among judges. That one of the most controversial subjects both in theory and practical application is sentencing.....The proposition that if judges knew the facts of a given case, they would all agree, or substantially agree on the result, is simply not so...Without reasonable uniformity of approach to sentencing among trial and appellate judges.....many of the sentencing objectives and principles prescribed in the Code are not attainable. This makes the search for just sanctions at best a lottery and at worst a myth. Pretending otherwise obscures the need for (the) courts to ...minimize unjustified disparity in sentencing while maintaining flexibility.

It is understood that Accused/Convict is a woman of good character with no previous record of violence. I am also fortified that the presentence report filed on 20.4.2024 is responsive as one of the yard sticks to assist the court in exercising discretion to appropriate a fair and proportionate sentence



13. The Accused/Convict was armed with a club, which I find not to be a dangerous weapon as known in law but on being manipulated it has been found to occasion fatal injuries to the victim. It is understood that the maximum sentence for manslaughter is life imprisonment, but for this case there are mitigating factors which count towards reduction of sentence as already captured in the ruling the accused/convict pleaded guilty to the
14. lesser offence of manslaughter under the scheme of plea bargaining agreement protocols as defined in Section 137 (A) –(O) of the CPC. I have therefore excluded her from life imprisonment for reasons that she is a first offender, she pleaded guilty and the weapon used was not a dangerous one.
15. I have considered the sentencing objectives in totality. The accused person is relatively a young person and it was established from the pre-sentence report that she appears to be concerned over the family's property that the victim's family raided from her home after her arrest. It was clearly not established whether she was remorseful. It was further established that the community is fond of retaliation and she was not recommended for a non-custodial sentence. In that regard, I find custodial sentence to appropriate and hereby sentence her to 5 years imprisonment
16. According to section 333(2) of the Criminal Procedure Code, the court is under an obligation to consider the time spent by the accused person in custody, until one is convicted. I have noted that the accused person was never bonded and as such the period has been factored in the final sentence. The accused/convict is hereby sentenced to serve 5 years imprisonment.
17. Orders accordingly.

DATED AND SIGNED AT LODWAR THIS 9TH DAY OF MAY, 2024

R. NYAKUNDI

JUDGE

In the presence of

Mr.Yusuf for the State

Accused

