



**Republic v Natembeya (Criminal Case E037 of 2021)
[2024] KEHC 7238 (KLR) (4 June 2024) (Sentence)**

Neutral citation: [2024] KEHC 7238 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E037 OF 2021**

REA OUGO, J

JUNE 4, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

OLIVER WAFULA NATEMBEYA ACCUSED

SENTENCE

1. Oliver Wafula Natembeya was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. On April 30, 2024 after a plea bargain agreement the accused pleaded guilty to the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.
3. The facts were read to him and he admitted that the facts as and correct. The accused unlawfully killed the deceased Titus Juma Wafula at his former girlfriend's house. He stabbed the deceased and the deceased died as a result of the stab wounds.
4. After pleading guilty and after conviction on his plea of guilty this court sought a pre-sentence report on the accused person.
5. The accused is a first offender.
6. The pre-sentence report is dated May 15, 2024. It gives the accused's family background, his personal history, and his past conduct. The victim's family attitude towards the offender, the circumstances of the offence, the offender's family attitude and the community's attitude towards the offender and the offence. I have carefully read and considered the said report.
7. The report indicates that the accused is 28 years old. He comes from a humble background. He is an obedient, respectful and hardworking person. He has no criminal record. The victim's family has no ill feelings against the accused and the family of the victim is willing to forgive him if they are



compensated. The social inquiry indicates that the deceased was involved in a love triangle and stabbed the deceased during a scuffle. The accused's family seeks a non-custodial sentence and indicate that they are willing to supervise and resettle the accused in their Misimo home. The community attitude is that the accused is not a criminal and that he isn't a threat to the community and they suspect that the accused was under the influence of alcohol.

8. The deceased was 30 years old and left one child who is with his mother. The accused seeks a non-custodial sentence and is remorseful.
9. The analysis of the probation officer is that the accused's criminogenic needs reveal key contributory factors including alcoholism, poor anger management and irrational decision-making. The officer recommends that he be placed to serve community service order as he will receive guidance and anger management and abuse of alcohol.
10. Miss Nekesa in mitigation stated as follows; the accused is a 1st offender and he is remorseful and a churchgoer. He is disciplined and seeking time to rethink his actions and he regrets his actions and promises to improve himself and change for the better. He is an individual of good character, loving and a concerned son who is a sole breadwinner as he is the one taking care of his sick father, mother and siblings and has a young son. They seek a non-custodial sentence to enable him to go back to the society. The court should consider that he has been in custody since October 21, 2021.
11. I have considered all the above, the circumstances of this case, the fact that the accused is a 1st offender and that he is remorseful. I have also considered that a life was lost for no good apparent reason. The deceased died as a result of a stab wound a deep penetrating stab wound on the right hemithorax measuring 4 cms by 2 cms. The accused could have walked away from the scuffle but he used a knife which he had to stab the deceased in the chest. The offence of manslaughter is a serious offence and the sentence provided in law is imprisonment for life. I have considered the period spent in remand by the accused about 2 ½ years. The accused opted to plea of manslaughter after the court heard 4 witnesses.
12. I have also considered pre-sentence guidelines. Though the pre-sentence report recommends a non-custodial sentence I am of the view that the accused deserve a custodial sentence for his unwarranted acts. I therefore sentence the accused to serve twelve (12) years imprisonment. I have already considered the period spent in remand. He has a right of appeal within 14 days.

DATED, SIGNED AND DELIVERED AT BUNGOMA ON THIS 4TH DAY OF JUNE 2024.

R. E. OUGO

JUDGE

In the presence of:

Oliver Wafula Natembeya Accused in Person

Miss Komora h/b for Miss Nekesa - For the Accused person

Miss Matere - State Counsel ODDP

Wilkister/ Diana - C/A

