



**Republic v Nyangau & another (Criminal Case E006 of 2022)
[2024] KEHC 9511 (KLR) (25 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 9511 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL CASE E006 OF 2022
WA OKWANY, J
JULY 25, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ZACHARIA OBERI NYANGAU 1ST ACCUSED

HENRY MISIGA NYANGAU ALIAS JOSHUA 2ND ACCUSED

SENTENCE

1. The accused persons herein, Zachariah Oberi Nyangau and Henry Misiga Nyangau alias Joshua, the 1st and 2nd accused herein were jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence were that: -

On 26th January, 2017 at around 10.00 am at Bonyaiguba village, Bonyaiguba Sub Location in Nyamira South Sub-County, within Nyamira County, jointly with others already before the court, murdered Isaac Onyinge Machora.

2. The accused pleaded not guilty to the charge and a trial ensued in which the prosecution presented a total of 5 (five) witnesses while the defence called 4 witness. At the close of the trial, this court found the accused persons guilty of the offence of manslaughter as opposed to the charge of murder. They were accordingly convicted for the lesser offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.
3. This court thereafter directed the Probation Officer to prepare and file a pre-sentence report before sentencing.
4. Section 202 as read with Section 205 of the *Penal Code* stipulate that conviction for manslaughter attracts sentence of life imprisonment.



5. The prosecution was represented by Mr. Chirchir, whereas the convicts were represented by Mr. Ondigo. In his submissions/mitigation before the sentencing, Mr. Ondigo submitted that the convicts are first offenders.
6. Counsel for the convicts urged this court to discharge the convicts or pass a non-custodial sentence on the grounds that they had young children who solely depended on them. It was submitted that the convicts are remorseful for their actions and the unfortunate turn of events that led to the death of the deceased.
7. The presentence report dated 2nd July 2024 indicates that the deceased and the convicts knew each other as they were residents of the same village and that they had a dispute over ownership of quarry stones. The dispute degenerated into a physical duel that resulted in the death of the deceased. The convicts are biological brothers. Their family have a positive attitude towards them and indicated their willingness to assist them resettle back at home. It was also reported that the convicts have no previous criminal record.
8. Section 205 of the *Penal Code*, states that the offence of manslaughter is punishable by the maximum penalty of life imprisonment. Maximum sentences are however usually reserved for the worst of such cases. I do not consider this to be a case falling in the category of the most extreme cases of manslaughter. As I had already noted in the judgment, the deceased was killed in the heat of the moment during a fight in which the deceased was also an active participant. It has been indicated that the convicts are first offenders. I have for that reason discounted life imprisonment.
9. The Judiciary Sentencing policy guidelines are silent on the path to be taken in manslaughter cases. This means that the court will be guided by past decisions on custodial sentences for offences of manslaughter. In *V M K v Republic* [2015] eKLR, an accused was sentenced to serve 10 years imprisonment for the offence of manslaughter.
10. Courts are inclined to impose life imprisonment where a deadly weapon was used in committing the offence. In this case, the evidence revealed that the deceased was pelted by quarry stones. The convicts are remorseful for their conduct. I will exclude the sentence of life imprisonment and I shall consider to reduce the sentence by a half from the starting point of ten years to a period of 5 years' imprisonment. I find a sentence of 5 years imprisonment for each of the convicts is reasonable in the circumstances.
11. In the case of *Republic v Daniel Okello Rapuch* [2017] eKLR, a sentence of 12 months imprisonment was meted out on a man who killed another man on the allegation of being involved in an illicit love affair with his girlfriend.
12. In *Republic v Ismail Hussein Ibrahim* [2018] eKLR, the court acquitted the accused in lieu of having him charged of a lesser offence of manslaughter for he was acting in self defence. The facts herein revealed that the accused and deceased had a long-standing disagreement over the ownership of the land on which the quarry stones were being harvested. On the material day the deceased had attacked the accused's co-worker at the quarry and the accused retaliated in self-defence and in a bid to rescue their colleague but unfortunately the deceased succumbed to the injuries. I am alive to the fact that the circumstances herein appear to have turned tragic to the warring village mates. The pre-sentence report recommends a lenient sentence.
13. I have considered the fact that the 1st convict is a fairly young man of 32 years while the 2nd convict is 46 years. In that regard the period of five years' imprisonment is justified in light of the mitigating factors.
14. I observe that the convicts first appeared in court on 23rd February 2022 and have been in custody since then. In accordance with the provisions of Section 333(2) of the *Criminal Procedure Code*, I direct that



the period that the convicts have spent in remand custody while awaiting their trial be deducted from their 5 years' sentence period.

15. It is so ordered.

SENTENCE DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 25TH DAY OF JULY 2024.

W. A. OKWANY

JUDGE

