



**Republic v M (Criminal Case E007 of 2020) [2023] KEHC 21 (KLR) (10 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 21 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE E007 OF 2020  
EM MURIITHI, J  
JANUARY 10, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**NM ..... ACCUSED**

**RULING**

1. The accused is initially charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code, which was upon a plea bargain agreement reduced to manslaughter c/s 202 as read with 205 of the Penal Code.
2. The facts of the case which were set out in the plea agreement and accepted by the accused as true leading to the conviction on plea of guilty were as follows:

“ Facts

9. The facts are that on the September 26, 2020 at around 1900 hours, the accused person took her 2 year old daughter SK the deceased to river [particulars Withheld] and strangled her with the use of her hands. The accused then threw the deceased her into the water intake along river [particulars Withheld].
10. On the 27<sup>th</sup> day of September very early in the morning at 0600 hours the accused person went back to river [particulars Withheld] where she had thrown the body of the deceased and removed said the body from the river and placed it between two stones at the river bank. The accused person also threw deceased’s clothes in the river. The accused then went to her aunt’s home one CKR at [particulars Withheld] in Tharaka Nithi County.



11. The body of the deceased was discovered at the scene by members of public who reported to the area chief SKMA who in turn informed the police at [particulars Withheld] Police Station calling IP Tom Onyancha.
  12. When the police got to the scene they found the body of the deceased naked and it had bruises of the forehead and both legs. The deceased body was then taken to Meru Level 5 Hospital Mortuary.
  13. On the September 28, 2020 at around 0800 hours CKR received a phone call from a person by the name Muthuri who informed her that accused person was being sought after for having killed her daughter the deceased. CKR then escorted the accused person to [particulars Withheld] Police Station in the company of PM.
  14. When the accused person was being interrogated she stated that the reason as to why she killed the deceased was because her boyfriend MM had impregnated her and he had told her that he would not marry her because she had a child from a previous relationship. The accused person further stated that her boyfriend told her to take the deceased to her mother but she then decided to kill the deceased which she did.
  15. Post mortem was conducted on the October 1, 2020 and the cause of death was found to be asphyxiation due to strangulation.
  16. The accused person was then arraigned before court and charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#) which after entering into a plea agreement the charge was reduced to that of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#).
3. Mr Masila, Principal Prosecution Counsel urged the court to consider that the accused was a first offender who had pleaded guilty to the offences and the age assessment putting the accused's age approximately between 16-17 when she committed the offence.
  4. In mitigation, counsel for the accused, Mr Mutege, asked the court to consider in addition to her apparent age of 16 years that she was a class 2 dropout who had been

“misled by a boy-friend who promised to marry her [and the fact that] she was remorseful and has considered plea bargain [and] she has been in custody since 2020 and nobody has ever visited her [and] she has learnt her lesson.”
  5. The probation officer's presentence report dated December 15, 2022 recommendation probation sentence in its conclusion as follows:

“Conclusion

Your honour, the offender is a youth of 21 years old. She hails from [particulars Withheld] within Tharaka Nithi County. She is the daughter of the late PM and SG and the second born in a family of nine siblings. Below is a brief summary of the findings of my social inquiry:

She is a class 2 dropout at [particulars Withheld] primary school. She is a low income earner and gets her income from casual jobs. The offender comes from a very poor endowed family background. Her



mother and her other siblings live in a small one roomed mud house in a government land. His father passed away 3 years ago and her mother has struggled a lot in providing for her family through casual jobs when available. Sometimes they get support from their neighbours, wellwishers and Samaritans. The offender's brother (P) and maternal aunt added that she used to drink a lot and smoke bhang and it got worse when he met Stano. The offender had an off and on relationship with JM (father of the late child) before she met Stano. The maternal aunt said that the offender was looking for someone who would marry her and get to support her poor family back at home. She was shy and not very cooperative at the beginning of the interview but as we continued talking she opened up and told us what actually happened. She also looked confused and was slow in comprehending what she was being asked. She has no previous records and was described by her family members as a naive person with a shy personality but they are not against a non-custodial sentence. Her aunt adds that she's illiterate and can be easily persuaded or convinced by other people due to her personality and poor upbringing. During the interview session, the offender started by telling us that her drink had been spiked with bhang and that's when she committed the offence but after talking with her for awhile she told us the truth. She explains that her boyfriend (Stano) strangled the child before throwing her to the river because he wanted to start a new life with her without her daughter. She was described by the community as a naive young lady with a shy personality. Most of the time she was not around because she would go and look for jobs in other towns to support her mother. The community members interviewed stated that the offender be considered for a noncustodial sentence. We did a home visit on December 16, 2022 in Kamujwa village and we were able to find the offender's two siblings and her neighbour (R). The offender's mother sentiment was not captured because she was at work doing casual jobs and also doesn't have a phone to communicate with. The father of the late child sentiments was not captured because we could not trace his whereabouts. The offender's brother stated that her sister is a shy person and doesn't talk much but is very naive. The offender's maternal aunt stated that she's illiterate and can be easily persuaded to do anything by someone else without thinking properly. The offender's brother (P) and maternal aunt added that she used to drink a lot and smoke bhang and it got worse when he met S. All in all they weren't against the non-custodial sentence since she's still young and has a lot to learn, grow and take care of her family as well.

- Melissa Njue, probation officer, Nkubue Sub-County Probation Office.

December 15, 2022”

6. The court has considered the mitigation by the accused's counsel, the contention of the DPP and the pre-sentence report by probation officer.

### **Sentence**

7. The coldblooded killing of own child from a previous marriage so that the killer may enter into or fulfil conditions of another marriage is a heinous selfish act of a parent which should be deterred by strong punishment. In the circumstances of this case, however, it is considered that the offending parent as a 17 year old, class two school dropout did not have fully developed mental capacity to decide on wrong and right and, therefore, had diminished responsibility, and was motivated by her social status as destitute and desperate to marry as a way of securing some economic security. The court accepts counsel's submission of her being misled by a boyfriend on a promise to marry!
8. The court has taken onto account that the accused has been in custody for 2 years and 3 months since the October 7, 2020 when she was arraigned in court for the offence of murder. This actual custody period is equivalent of a sentence of imprisonment for of 3 years and 4 months, with remission. In the circumstance of the case, the court considers this period of imprisonment already served to be sufficient punishment by way of custodial sentence.



9. The court would agree that the accused now aged 21 years may benefit from probation instruction and supervision as set out in the intervention strategy in the presentence report dated December 15, 2022 as follows:

“Rehabilitation of the offender through guidance and counselling;  
Facilitate healing through family conferences;  
Guidance on drug and substance abuse;  
Counselling on post-offence trauma and stigma;  
Reintegration and resettlement; and  
Supervision to ensure adherence to probation order.”

10. The court considers that the probation supervision and guidance should be on the offender for the entire period of the maximum probation sentence of three (3) years.

### **Orders**

11. Consequently, having convicted the accused on her own plea of guilty for the offence of manslaughter c/s 202 as read with 205 of the [Criminal Procedure Code](#), and the court now sentences the accused to an imprisonment term of three (3) years to commence pursuant to section 333(2) of the [Criminal Procedure Code](#) from the date of arraignment on October 7, 2020, and in addition further to serve probation for the full term of the maximum probation sentence of three (3) years from today.

12. The court notes that the accused has been in actual custody time of 2 years three (3) months and has, therefore, fully served, with remission, the said sentence of three (3) years; and accused shall, therefore, be released from custody and placed on probation for three (3) years, unless she is otherwise lawfully held.

Order accordingly.

**DATED AND DELIVERED ON THIS 10<sup>TH</sup> DAY OF JANUARY, 2023.**

**EDWARD M MURIITHI**

**JUDGE**

### **Appearances**

Mr Masila, Principal Prosecution Counsel for the State.

Mr Mutegi Advocate for the Accused.

