



**Republic v MW (Criminal Case E028 of 2022)  
[2023] KEHC 646 (KLR) (Crim) (2 February 2023) (Sentence)**

Neutral citation: [2023] KEHC 646 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL CASE E028 OF 2022**

**LN MUTENDE, J**

**FEBRUARY 2, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MW ALIAS N ..... SUBJECT**

**SENTENCE**

1. MW alias N a child in conflict with the law, hereinafter, the subject, initially faced a charge of murder contrary to section 203 as read with section 204 of the *Penal Code*, but, through a guardian Mary Njoki and a legal representative, opted to enter into a plea-bargain arrangement with the prosecution as per the plea bargain-agreement dated September 19, 2022, that was adopted as an order of the court pursuant to section 137H of the *Criminal Procedure Code* (CPC). Consequently, she faced a lesser charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*.
2. Facts of the case are that on the April 11, 2022, ANK from Mitaboni, Machakos visited her friend NW(deceased) who was pregnant. The following day, the April 12, 2022, at about 9.00pm, they went to buy food, and encountered the subject. The deceased asked her why she was spreading rumours about her pregnancy. They argued and a fight ensued. The deceased ran to a neighbour's house, took a knife and pursued the subject who ran to their house and also took a knife. They fought and the Subject stabbed the deceased on the chest, between breasts. The deceased who was bleeding fell down as the subject ran to the house and hid. The deceased was rushed to a nearby clinic but pronounced dead on arrival. The subject was later found at her brother's house and arrested.
3. A postmortem was conducted at Mama Lucy Hospital on April 15, 2022, and, it was concluded that the cause of death was cardiac injury due to penetrating sharp object trauma to the chest.



4. A pre-sentence report dated October 14, 2022, confirmed that the subject and the deceased were childhood friends. The views of the secondary victims were obtained from the deceased's mother and other relatives. They were in despair. Her mother's health was affected, and they lived in fear of the likelihood of being attacked by the peers of the subject. They prayed for a deterrent sentence.
5. Community views were obtained from the Chief, nyumba kumi leaders and neighbours of both the subject and deceased who were of the view that if given the option of a non-custodial sentence no breach of peace would be caused.
6. The probation officer recommended a non-custodial sentence due to the subject's age and considering the receptive community. Further, that the Probation Service would empower the subject with problem solving skills and anger management to forestall a possible future occurrence.
7. The State had no previous records; therefore, the subject was treated as a first offender.
8. In mitigation, it was urged that the incident was an accident that arose from a fight between the two(2) minors who were armed with knives. That the subject was also injured and had to seek medical treatment. That the fact of the subject having stabbed the victim only once was evidence of no intention to kill. That the fact of having hailed from slums, a place riddled with drugs, and, poverty contributed to the fact.
9. The provisions of section 205 of the Penal Code enact that: Any person who commits the felony of manslaughter is liable to life imprisonment.
10. I have been called upon to consider giving the subject a non-custodial sentence. Whether or not to consider a custodial or non-custodial sentence depends on circumstances of each case. Section 2 of the Children Act provides that:

“ child” means an individual who has not attained the age of eighteen years;
11. It is not in doubt that the subject herein being seventeen (17) years is a child. Section 238 of the Children Act, (Act) 2022, provides as follows:-
  - (1) No court shall order the imprisonment of a child.
  - (2) Notwithstanding the nature of any offence punishable by death, no court shall impose the death penalty on a child on a finding of guilty for such an offence.
12. Section 239 of the Act, that is in respect of methods of dealing with children in conflict with the law stipulate thus:-
  - (1) Where a child is tried for an offence, and the court is satisfied as to their guilt, the court may deal with the case in one or more of the following ways—
    - (a) discharge the child under section 35(1) of the Penal Code;
    - (b) discharge the child on his or her entering into a recognisance, with or without sureties;
    - (c) make a probation order against the offender under the provisions of the Probation of Offenders Act;
    - (d) commit the offender to the care of a fit person, whether a relative or not, or a charitable children's institution willing to undertake the care of the offender;



- (e) if the child is between twelve years and fifteen years of age, order that the child be sent to a rehabilitation institution suitable to the child's needs and circumstances;
- (f) order the child to pay a fine, compensation or costs, or any or all of them, having regard to the means of the child's parents or guardian;
- (g) in the case of a child who has attained the age of sixteen years, deal with the child in accordance with the *Borstal Institutions Act*;
- (h) place the child under the care of a qualified counsellor or psychologist;
- (i) order that the child be placed in an educational institution or vocational training programme;
- (j) order that the child be placed in a probation hostel under the provisions of the *Probation of Offenders Act*;
- (k) make a community service order;
- (l) make a restorative justice order;
- (m) make a supervision order;
- (n) make any other orders of diversion provided for in this part; or
- (o) deal with the child in any other lawful manner as may be provided under any written law.

13. I have considered the fact of the subject being a first offender and remorsefulness expressed. I note that the deceased's family was seriously affected by the crime, but, the law is clear regarding dealing with a child who is in conflict with the law.

14. Further, taking into consideration circumstances in which the offence was committed, I commit the subject to the NG Hostel where she will be held for a period one (1) year, from today, the February 2, 2022, to be trained in beauty therapy, tailoring and dress-making. Thereafter, she will be under probation supervision for a period of two (2) years.

14. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI, THIS 2<sup>ND</sup> DAY OF FEBUARY, 2023.**

**L. N. MUTENDE**

**JUDGE**

**IN THE PRESENCE OF:**

**The Subject**

**Mr. Agoi for the Subject**

**Ms. Adhiambo for ODPP**

**Court Assistant – Mutai**

