



**Republic v Onyando (Criminal Case 6 of 2019)
[2023] KEHC 2313 (KLR) (Crim) (21 March 2023) (Sentence)**

Neutral citation: [2023] KEHC 2313 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 6 OF 2019
LN MUTENDE, J
MARCH 21, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

SIMEON OBWOCHA ONYANDO ACCUSED

SENTENCE

1. Simeon Obwocha Onyando, the accused, had been charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*, but, following an arrangement with the prosecution he agreed to plead guilty to a lesser charge of manslaughter in exchange of a lenient sentence. This was reduced into the plea-bargaining agreement that was adopted as an order of this court pursuant to section 137 H of the *Criminal Procedure Code*. In the result, he was convicted of a lesser charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*.
2. Briefly the facts of the case are that the accused and the mother of the deceased Irene Awour Omwango (Irene) met in November, 2017, at a bus stop in Kisii town. They boarded the same bus to Nairobi, exchanged contacts and occasionally communicated. This led to a romantic relationship between them.
3. Irene was blessed with three children, BT, FC and MA, (deceased) aged Nine(9), Six(6) and Four(4) years respectively, who lived with their grandmother but would join their mother during School holidays. The accused, a student at Kenyatta University requested to stay with Irene when the university closed following students' unrest. He also requested Irene to bring the children from home so that he would build a relationship with them as their step-father.
4. They were brought and indeed the accused and the children bonded. He would spend the night with Irene at the university hostel and also at her residence. The relationship blossomed such that Irene could leave the children under his care as she went for casual jobs in the neighborhood.



5. In December, 2018 during the holidays, the accused and the children were at Irene's residence in Nairobi. The deceased intimated to her mother that she did not want the accused to return to their house as he had pinched her on the tummy. When the accused was confronted by Irene over the issue he packed his belongings and left. He returned a week later when he caned the deceased because she had dropped his phone from the charger, this was in absence of the deceased's mother. On returning home, Irene found the deceased with swollen cheeks following the assault by the accused. The act prompted Irene to chase away the accused but he threatened to go back by force.
6. The accused returned to Irene's house on January 4, 2019 and found the deceased playing with other children. Irene was not at home. The accused called her to the house. He poured the milk that he came with in a cup and added some substance which he gave to the deceased to drink. He then instructed her to sleep and even covered her with a blanket. The deceased started to vomit and the accused fled immediately leaving her abandoned where she was lying.
7. Irene returned home in the evening and found the deceased vomiting and was told what had happened by the other children. She rushed the deceased to Mbagathi hospital and was later referred to Kenyatta National hospital on January 5, 2019. The child was unable to talk and was admitted to the intensive care unit where she succumbed on January 7, 2019 while undergoing treatment. The accused was arrested by members of public.
8. The postmortem conducted indicated that the cause of death was unascertainable pending toxicological screen reports. The samples of the vomit and residue from the cup used were examined at the government chemist. The analyst reports established that dichlorvos an organophosphate pesticide was detected in the stomach and liver samples, a substance is poisonous and harmful, if ingested. The cup and blanket contained miltaz, a non-systemic acaricide an insecticide, hence the cause of death being established.
9. There having been no previous records, the accused is treated as a first offender.
10. In mitigation, it is submitted that the accused had no experience of what love was and was not mature enough to understand the consequences of his action that was driven by love. The accused who describes the killing as an act of passion urges that he has undergone rehabilitation and has reformed and regrets his action and decision.
11. That he wrote a letter to Irene during pendency of the case through the Investigation Officer expressing sympathy to the family of the deceased, and , that he is willing to support her to raise the deceased's siblings.
12. Further, that he has undergone counselling at the Directorate of Wellness & Rehabilitation Services , Kenyatta University. That he managed to complete his education and was awarded a Bachelor of Education degree and is now a qualified teacher with a Teachers Service Commission Number, and while in custody he taught prisoners who posted good results. Lastly, he submits that he has turned to God and has changed his ways, being the only person from his family who excelled, his family looks up to him and that he has made peace with the mother of the deceased. He prays for a non-custodial sentence.
13. In order for this court to reach an informed decision on sentence, it called for a pre-sentence report. The views of victims were obtained from the mother of the deceased and her sister who plead for justice. It is stated that the accused had subjected the mother of the deceased (his lover) and her children to horror when he attempted to set the house ablaze with cooking gas, he later escaped when she sought assistance from neighbours. He confiscated her Identity card, phone and cash and borrowed money from Mshwari and Tala digital financial services.



14. On the date the offence was committed, that the accused had called Irene to town to solve the issues and to return her stuff. She later went back to the house and found her child in comatose .
15. The deceased was given poison in presence of his siblings and Kenyatta National Hospital also advised the accused to reveal the type of poison he administered to enable them save the deceased but he declined to comply and the deceased died three days later. In the result Irene contemplated suicide. and has not fully healed. They argue that the child was innocent and the accused was expected to be a father figure. The family is not interested in any form of reconciliation.
16. On the other hand, the accused's family plead for mercy and describe him as a beacon of hope and a role model to his siblings following his academic prowess. In their view, the deceased acted from immaturity and lack of experience in solving family problems. They are willing to support him in his rehabilitation.
17. Section 205 of the [Penal Code](#) stipulate that:
 - i. Any person who commits the felony of manslaughter is liable to life imprisonment.
18. I am called upon to consider granting the accused a non-custodial sentence. Factors to be considered in exercising discretion in this respect are set out in the [Judiciary Sentencing Guidelines](#). Paragraph 7.19 subsections (1),(4),(5) and (6) provide *interalia* that The following factors should be taken into account:
 - (1). Gravity of the offence: In the absence of
aggravating circumstances or any other circumstance that render a non-custodial sentence unsuitable, a sentence of imprisonment should be avoided in respect to misdemeanors.
 - (4). Character of the offender: Non-custodial
sentences are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
 - (5). Protection of the community: Where there is
evidence that the offender is likely to pose a threat to the community; a non-custodial sentence may not be the most appropriate. The probation officer's report should inform the court of such information.
 - (6). Offender's responsibility to third parties:
Where committing an offender to a custodial sentence is likely to unduly prejudice others, particularly vulnerable persons, who depend on him/her, a court should consider a noncustodial sentence if, in light of the gravity of the offence, no injustice will be occasioned. Information on the offender's responsibility to third parties should be substantiated.
19. The principle of proportionality of punishment enjoins the court to consider sentence along with the accused behavior and participation as well as the severity of the offence.
20. Paragraph 3.1 (f) the [sentencing guidelines](#) that refers to the principle of proportionality provides that: the sentence meted out must be proportionate to the offending behaviour. The punishment must not



- be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behaviour is weighted in view of the actual, foreseeable and intended impact of the offence as well as the responsibility of the offender.
21. The act of killing a child was heinous, calculated and done in a callous manner. The accused who was cruel and insensitive disregarded the feeling of others. The victim was an innocent child, he could have saved her life by answering a simple call by the hospital and revealing the poisonous substance but he declined.
 22. The accused avers that he has reformed. The letter from the wellness and rehabilitation services confirm that he did attend six counselling sessions but does not stipulate if he had reformed such that he was able to control his anger. The letter purportedly written to the mother of the deceased a year later does not express any remorse. Indeed, the way its framed does not suggest that he was the one responsible for the act that caused the death of the deceased. The accused person's academic achievement does not demonstrate any rehabilitation on his part.
 23. Notably, the accused entered plea bargain with the state after five witnesses, the arresting officer inclusive, had testified, it can therefore not be alleged that he saved judicial time. Looking at the conduct of the accused as to the way he met Irene and calculatively got into her life and benefited from her noble heart as she would provide for him while in college, then subsequently killed her child is evidence of being a dangerous person.
 24. Looking at comparative decisions, in the case of *Republic Vs Antony Mwema Mutisya* [2020] eKLR, the accused was convicted and sentenced to death for killing his 2 year old daughter and further attempting to kill his wife. It was a case where the accused set the house ablaze and in the process a child's life was lost and the 2nd victim sustained fatal injuries. The court noted that the child suffered a painful death committed in a very brutal and heartless manner. The crime was not one that was committed in the heat of the moment. Rather it was planned by the accused in that he travelled miles away from his station in Siaya in the then Nyanza Province to Makueni in the then Eastern Province, purchased the fuel and prepared himself to douse the deceased and the mother.
 25. The Probation Officer's Report in the *Mwema case* (*Supra*) indicated that the offence was as a result of inability by the accused to accept rejection, lack of self-control, poor anger management, being insecure and lack of alternative conflict resolution mechanisms. The accused was resented to 40 years imprisonment.
 26. In the case of *Republic Vs Roma Michael Furaha* [2020] eKLR the accused killed his son a minor, by poisoning. The circumstantial evidence proved his guilt and he was convicted for murder. The accused was a young person of about 24 years and was 22 years at the time of commission of the offence. Although the accused was a youthful offender the court declined to place undue weight on that factor. It sentenced him to serve 30 years imprisonment.
 27. Taking all these into consideration and the fact that no reconciliation has taken place and there would be nothing wrong with the accused being rehabilitated under the custody of the correctional facilities. That would be the best place to meet all applicable objectives of sentencing which include deterrence, retribution and reformation alluded to herein above. This will also ensure justice for the victim is served. For reasons given, I sentence the accused to twenty-three (23) years imprisonment, a sentence that will be effective from the today the March 21, 2023, having taken into account time spent in custody, (16 months) being from 24/1/2019 to 6/11/2019 and 2/11/2022 to-date.
 28. It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT
NAIROBI, THIS 21ST DAY OF MARCH, 2023.**

L. N. MUTENDE

JUDGE

In The Presence Of:

Accused

Mr. Mwaura for the State

Mr. Omenke for Accused

Court Assistant – Mutai/Evance

