



**Republic v M'Mbaka (Criminal Case 48 of 2015)  
[2023] KEHC 1482 (KLR) (2 March 2023) (Sentence)**

Neutral citation: [2023] KEHC 1482 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE 48 OF 2015**

**PJO OTIENO, J  
MARCH 2, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**PATRICK M'MBAKA ALIAS KABUMPS ..... ACCUSED**

**SENTENCE**

1. The accused was charged with the offence of murder contrary to Section 203 as read with section 204 of the [Penal Code](#) and arraigned in Court on the July 29, 2015. Between that date and July 14, 2022, no single witness had been availed to give evidence hence the Court was not happy with the conduct of prosecution and gave the very last adjournment. The next time the matter was listed for hearing and the prosecution availed a witness, it was the defence who addressed the Court and informed it that his client was willing to plea bargain. True to their word, a plea agreement was presented to court on the November 25, 2022 together with a charge sheet on manslaughter. The agreement was adopted by the Court and the accused readily pleaded to the negotiated charge. He was accordingly convicted.
2. Upon conviction, the Court called for a pre-sentence report. That report was filed in Court on the February 3, 2023. The report in essence captures the social circumstances of the accused to be that he has no previous criminal record; that he was remorseful for the offence and that the deceased met her death when a fight broke between the accused a new lover the deceased was staying with having left the accused as a husband. The only surviving member of the deceased's family refused to comment on the basis that the incident took place when she was too young to recollect.
3. The accused family pleaded for leniency upon him, that the family would not only conduct a cleansing ceremony upon the accused but also seek reconciliation and settle him on his uncle's place at Mumbetsa to guarantee his safety. Even the area administration, represented by the Assistant Chief, is not opposed to a non-custodial sentence being imposed but feared that a retaliatory attack could not be ruled out hence the need to resettle the accused elsewhere if released on non-custodial sentence.



4. In summary the after care services concludes and recommends he be considered for supervised community sanction with the offers from the family to help him reintegrate into society being kept in mind. The department recommends five strategies to assist the accused.
5. In his mitigation on behalf of the accused, Counsel underscored the youthful age of the accused and the fact that he sired a child with the deceased, now aged 10 years, who the accused wishes to bring up. That he accepted his undoing with regrets readily, entered a plea agreement and having been in custody since 2015 it was apt to ask for a non-custodial sentence, because he had suffered sufficient incarceration
6. For the prosecution, Counsel emphasized the seriousness of the offence with which the accused has been convicted and asked the Court to consider a sanction that would help the accused rehabilitate and to serve as a deterrence to others from committing such offence.
7. The Court has considered all the materials placed at its disposal and the journey the case has taken in court since initiation. It is also appreciated that the accused has been incarcerated for the entire period since arrest and has thus served more than seven (7) years in prison.
8. While the offence of manslaughter attracts upto a life sentence as the very maximum term the Court can impose, the Court is vested with discretion in matters sentencing. That discretion is informed by the age of the accused, his conduct at trial, the length of the time the trial has taken, the disposition of the accused and the purpose to be achieved by the sentence deemed appropriate. The Court is of the view that owing to the age of the accused and the age of the child with the deceased and considering the best interest of the child to be in most cases met by facilitating close parental supervision, I do consider that a non-custodial sentence is appropriate. In doing so the Court has in line with section 333 (2) of the Criminal Procedure Code taken into account the period of incarceration since arraignment.
9. The Court while of the view that the accused deserves a custodial sentence of upto ten (10) years imprisonment, discounts the years served pending trial and sentences the accused to serve a term of three (3) years Community Service Order at public institution to be identified by Mr. Humphrey Njera, the Probation Officer, Kakamega Probation Station.
10. Mention on March 9, 2023 for probation officer to attend court and take charge.

**DATED, SIGNED AND DELIVERED IN KAKAMEGA THIS 2<sup>ND</sup> DAY OF MARCH 2023.**

**PATRICK J. O. OTIENO**

**JUDGE**

**In the presence of:**

Ms. Chala for the Prosecution/State

Mr. Momanyi for the Accused

Court Assistant: Polycap Mukabwa

