



**Republic v Ashikholwa (Criminal Case E109 of 2021)
[2023] KEHC 3060 (KLR) (12 April 2023) (Sentence)**

Neutral citation: [2023] KEHC 3060 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E109 OF 2021
PJO OTIENO, J
APRIL 12, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

ANTHONY ASHIKHOLWA ACCUSED

SENTENCE

1. A plea agreement dated November 22, 2022 and filed in court on the same day, came before court for adoption, was adopted, a negotiated charge of manslaughter was preferred against the accused to which he entered a plea of guilty and was thus convicted for the offence of manslaughter.
2. Pursuant to that plea of guilt and the consequent conviction having been entered, the court directed that a pre-sentencing and/or a victim impact report be filed by the Probation Officer prior to mitigation and sentencing.
3. The pre-sentence and victim impact statement Report was filed on March 28, 2023 and reveals that the accused family as well as the community are open to having him back at home on a non-custodial sentence for purposes of being assisted to reintegrate into society and becoming a responsible and productive citizen. The victim's family and the family of the accused see no threat to them and the peace of the community at large, if the accused is granted a non-custodial sentence
4. I have taken into account the recommendations made in that report and the mitigation offered by Ms. Aligula, advocate, on behalf of the accused who urged the court to exercise leniency on the accused and to consider that he has saved judicial time by entering a plea agreement. Counsel added that the accused was a friend to the deceased adding that the accused is a father to four children, all minors, but separated from the Mather of the children before the incident and that only a non-custodial sentence will benefit the accused and the family.



5. I have equally taken into consideration the sentiments expressed by Ms. Chala, the prosecuting counsel that the offense for which the accused has been convicted is a serious one and that only a custodial sentence will help him reform. The counsel urges that the accused deserves no leniency by way of a non-custodial sentence.
6. Drawing guidance from the objectives of sentencing in Criminal justice system, and being cognizant of the gravity of the offence for which the accused has been convicted, the age of the accused, that of the deceased and the fact that both were friends and relatives, and that he has no past criminal record, I find that the circumstances of the case and views of the community favours the imposition of a lenient sentence.
7. Having given regard to the above factors and considerations, I determine that the case presents a suitable scenario for the application of section 33 of the Penal Code. I determine that the accused be sentenced to serve an imprisonment term of seven years, computed from the date he was arrested being the March 10, 2021, and thereafter enter into a cognizance in the sum of Kshs. 100,000 with one surety in the like sum, and bind himself to keep the peace and be of good conduct for a period of one year, computed from the date the imprisonment term hereby imposed terminates. It is further ordered that the accused shall not be released from prison before he executes the cognizance.
8. The order to keep the peace and be of good conduct shall be supervised by the probation officer in charge, Kakamega south sub-county for the period of the cognizance.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 12TH DAY OF APRIL 2023.

PATRICK J. O. OTIENO

JUDGE

In the presence of:

Court Assistant: Polycap

Ms. Chala for the Prosecution

Ms. Aligula for the Accused

Accused – present

