



**Republic v K alias K (Criminal Case E053 of 2022)
[2023] KEHC 18769 (KLR) (13 June 2023) (Sentence)**

Neutral citation: [2023] KEHC 18769 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E053 OF 2022**

**HM NYAGA, J
JUNE 13, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

AKK ALIAS K ACCUSED

SENTENCE

1. The accused was initially charged with murder contrary to Section 203 as read with 204 of the [Penal Code](#). The particulars being that on the September 18, 2022 at [particulars Withheld] Village in Kabongoi Location of Kuresoi South Sub County within Nakuru County, he murdered EKL.
2. On October 5, 2022 the charge was read to him and he pleaded not guilty. Before the trial commenced, the accused person sought to plea bargain with the state for a lesser charge of manslaughter which the prosecution acceded to. A plea bargaining agreement was signed between the parties and a fresh charge of manslaughter was filed, substituting the Information for murder. In the Information for Manslaughter dated May 15, 2023 signed by Loice Murunga Senior Principal Prosecution Counsel, the accused is charged with Manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#). Particulars of the offence are that on the September 18, 2022 at [particulars Withheld] Village in Kabongoi Location of Kuresoi South Sub-County within Nakuru County, he unlawfully killed EKL.
3. The accused person who was duly represented by an advocate, Ms Githae, and having signed the plea bargaining agreement together with his advocate, pleaded guilty to the Information and a plea of guilty was entered against him. The facts of the case were read out to him in a language which he understood and he admitted the said facts as being true. This court then proceeded to convict him accordingly, for the offence of manslaughter.
4. The prosecution indicated that the accused was a first offender and considering that he is sixteen (16) years old, it was recommended that he be sentenced to three (3) years in a Borstal Institution where he



can continue with his education. In mitigation by his counsel, the accused sought for a non-custodial sentence. He stated that he is remorseful and that at the time of offence he was fifteen (15) years old and he was acting in self-defence. He told this court that he was a student at [particulars Withheld] Secondary School in Kuresoi and since his arrest on September 13, 2022 he has been in custody and as a result he has lost a lot in terms of education. He stated that he has changed and seeks for another chance in life.

5. It is important to outline the facts as read out by the prosecution on May 18, 2023 and which the accused person admitted as being true before he was convicted for manslaughter. The facts were as follows: -

“on September 18, 2022, the deceased who married the accused mother, met the accused. The deceased was carrying a Maasai sword. He wanted to hit the accused with it. The accused seized the sword and cut the deceased with it. He then fled from the scene. Good Samaritans took the deceased to hospital but he was pronounced dead. The police took over the case. They found that the deceased had married the accused mother after his father died. The accused and his siblings were against the deceased as he was wasting their father’s property. A post mortem was carried out on the deceased’s body and the cause of death was found to be Traumatic Brain Injury and Severe haemorrhage following injury by a sharp object. The post mortem report was produced as P. Exhibit 1”

6. Subsequently, this court ordered for Presentence Report to be filed urgently. The same was duly filed on May 29, 2023.
7. In the probation Officer’s Report, it shows that the accused is a third born in a family of eight (8) children. His father is deceased. His mother is a farmer and his family solely depend on farming for sustenance. The accused was born in 2007 and he schooled at [particulars Withheld] Primary School from class 1-8 where he did his KCPE and obtained 271 marks. He proceeded to [particulars Withheld] Secondary School where he was studying until the time of his arrest.
8. The victims’ relatives and the accused person’s family have reconciled and they are in the process of conducting cultural rites in order to bring the two parties together. They have no problem with the accused being accorded a non-custodial sentence. The accused person’s community have no problem with him. The area chief one Thomas Cheselet stated that the accused is quiet, reserved and hardly antagonized other people. He said the community was in fact surprised that he was charged with such a serious offence. However, he is concerned that since appeasing rituals have not been undertaken some community members may retaliate, harm the accused and to avert this, he suggested relocation of the accused from where the offence happened.
9. The accused is remorseful and admits committing the offence. He stated that he was acting in self-defence.
10. The probation officer, one Samuel Ndungu, recommends the accused be placed on a probation for a period of two (2) years.
11. In considering sentencing, the court must take into full account the best interest of a child in conflict with the law. Article 53(2) of *Constitution of Kenya, 2010* provides as follows:

A child’s best interests are of paramount importance in every matter concerning the child.



12. Section 8 (1) (a) of the [Children Act, 2022](#) states that;

‘ In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies the best interests of the child shall be the primary consideration.’

13. Article 4 (1) of the [African Charter on the Rights and Welfare of the child Best Interest of the Child](#) states that;

‘In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration’.

14. In the instant case, I have considered that the accused has pleaded guilty to a lesser charge thus saving the court precious time. The accused was first arraigned before this court on October 3, 2022 and has been in custody all through. I have also considered that the accused is a minor aged fifteen (15) years. Section 239 of the [Children Act](#) applies to this case. This Section provides as follows:

“Methods of dealing with children in conflict with the law.

- (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 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; 120 [Children No. 29 of 2022](#)
 - (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.”

15. I have considered the circumstances of the offence. The deceased wanted to hit the accused with a Maasai sword and the accused seized the sword and cut the deceased’s head with it. The deceased was rushed to the hospital by good Samaritans but was pronounced dead on arrival. The facts show that there was no prior confrontation between the deceased and the accused, and the accused seemed to have acted on the spur of the moment. He claims that he acted in self-defence as the deceased was just about to attack him.
16. The sentence for the offence of manslaughter if an accused is an adult is prescribed under Section 205 of the *Penal Code*.

“ Any person who commits the felony of manslaughter is liable to imprisonment for life”

17. However, as stated the accused is a child under the *Children Act*. The aforesaid Section 239 (1) of the *Children Act* sets out methods of dealing with child offenders. It prohibits any form of imprisonment of children. Consequently, a non-custodial sentence is the method of choice that the court can consider in this case.
18. The accused should not be equated to a devious child who deserves banishment from society. He could be anyone’s child. A fatal error like the one he committed ought not to define the rest of his life. In my view what he needs is rehabilitation in order to feel accepted despite the act that he committed. That is essentially what the *Children Act* intended.
19. Having taken all these factors into consideration, I find that the accused deserves a second chance. I am satisfied that in view of the period he has spent in custody he has somewhat atoned for his sins. The pre-sentence report is favourable for a non-custodial sentence.
20. I am of the view that placing the accused on probation as proposed is appropriate in the circumstances and it would be in his best interest. This way, he will be able to continue with his education.
21. Consequently, I order the accused to serve under probation for a period of three (3) years.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 13TH DAY OF JUNE, 2023.

H. M. NYAGA

JUDGE

In the presence of;

C/A Jeniffer

Ms Murunga for state

For accused Ms Githae

Accused present

