



**Republic v Gatwe (Criminal Case 8 of 2018) [2023] KEHC 21258 (KLR) (25 July 2023) (Sentence)**

Neutral citation: [2023] KEHC 21258 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL CASE 8 OF 2018  
RM MWONGO, J  
JULY 25, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**NANCY NYAWIRA GATWE ..... ACCUSED**

**SENTENCE**

1. The Accused was charged with the Murder of her son Melvin Mureithi Nyawira on 8<sup>th</sup> June, 2018 at Kimandi village Kirinyaga Central Sub County.
2. She was arraigned in court on 21<sup>st</sup> June 2018 and eventually pleaded not guilty on 17<sup>th</sup> July 2018. The prosecution proposed to call ten (10) witnesses. The state gave its opening statement on 5<sup>th</sup> November 2019.
3. For a variety of reason, the hearing did not proceed as anticipated and on 30<sup>th</sup> July 2020, the accused requested that a plea bargain agreement be considered in her case.
4. Negotiations on Plea Bargain Agreement were slow and finally on 8<sup>th</sup> March 2023 the court was presented with a signed Plea Bargain Agreement. The court adopted the Plea Bargain Agreement pursuant to Section 137 A -0 after it was satisfied that the accused was acting voluntarily and she was of sound mind.
5. The court convicted the accused with manslaughter on 8<sup>th</sup> march 2023. A Probation Officers Pre-Sentence report was ordered to be availed to enable proper consideration during mitigation.
6. The brief facts of the case as agreed by the parties are that on 8<sup>th</sup> June, 2018, the accused left home accompanied by her son Melvin Mureithi then aged 5 years. Later, at 6 pm she returned home alone. Her grandmother asked about the deceased, but she did not give a clear answer. The father of the deceased and members of the public then conducted a search for the deceased.



However, the accused confessed to having thrown the minor into Rutui River and drowned him. Following the information, the family informed the area chief who helped them escort the accused to Kerugoya Police Station where she was arrested. On 9<sup>th</sup> June, 2018, a search ensued at the River Rutui where the minor's body was recovered and taken to Kerugoya County Hospital.

7. The post mortem dated 11<sup>th</sup> June, 2018 indicate the cause of death was due to cardiopulmonary arrest due to asphyxiation caused by drowning.
8. On 28<sup>th</sup> March, 2023 the defence counsel made the following submissions on mitigation. She submitted that the accused was 27 years of age and had been in custody for 5 years. She is a single mother whose remaining child is 8 years of age. She was engaged in a cult and killed the deceased with the promise of financial reward. She co-operated with the police to recover the deceased body. During imprisonment she has learnt hairdressing and flower trimming. She had been continuing with her studies and is currently in form two. She is a first offender. She has reformed and seeks a non-custodial sentence to support her child and continue with her secondary school education. Further, the probation report is favourable. They prayed for a non-custodial sentence.
9. The prosecution submitted that the accused killed her child who had faith in her. There was likelihood that she could slide back to her old habit. Hence, the non-custodial sentence should be condition on other terms to be imposed by the court.
10. The only issue for determination is what is the appropriate sentence to be meted on the accused.

### **Analysis and Determination**

11. The Probation Report indicates that the accused is 27 years of age and has four adult siblings all engaged in casual labour and small-scale businesses. The accused dropped out of school at class 7 in the year 2012 on becoming pregnant. She bore one child in 2013 and the other one in 2016. She said that she had developed a relationship with a man in Kerugoya who had promised to give Kshs 1.5 million if she threw her children into the river. She managed to throw the deceased into the river after being given a deposit of Kshs 3,000. The other child managed to escape.
12. The accused is not viewed as a threat to the community and is not likely to be harmed by members of the public should he be released. She has a supportive family that is willing to assist her reintegrate to the community. The victim is the accused's first-born son who died at 5 years of age. The rest of the family is traumatized by this incident but have forgiven the offender. They prefer a non-custodial sentence to allow her continue taking care of her remaining child.
13. The Probation Report recommends that the accused be sentenced to a non-custodial sentence during which he would be accorded guidance and counselling to live uprightly again.
14. The applicable law on sentence for the offence of manslaughter is found under the provisions of Section 205 of the *Penal Code* which reads as follows;

‘Any person who commits the felony of manslaughter is liable to imprisonment for life’
15. The statute provides for the maximum sentence that is life imprisonment. This court has taken into consideration the aggravating circumstances in that the convict grabbed the victim and threw him into the river where he drowned. The accused said that she killed her child out of ignorance after being promised a reward of Kshs 1.5 million.



16. The supreme Court decision in *Muruatetu* case provided the mitigating circumstances to be considered before sentencing.

*Francis Karioko Muruatetu & another v Republic* [2017] eKLR

In sentencing the court will consider mitigating factors such as the following;

- a. Age of the offender;
  - b. Being a first offender;
  - c. Whether the offender pleaded guilty;
  - d. Character and record of the offender;
  - e. Commission of the offence in response to gender-based violence;
  - f. The manner in which the offence was committed on the victim;
  - g. The physical and psychological effect of the offence on the victim's family;
  - h. Remorsefulness of the offender;
  - i. The possibility of reform and social re-adaptation of the offender;
  - j. Any other factor that the Court considers relevant.
17. I have carefully considered the injuries set out in the Post Mortem and the mitigation proffered and the Probation Report.
18. I also note from the Post Mortem Report that the child died of Asphyxiation due to drowning, and that there were no other injuries on the child other than injuries that appeared to the doctor to be fresh bites to the ear.
19. The conduct of the accused in committing the offence suggests a mind frame that is really quite unbalanced. To be offered Ksh.3,000 as a deposit to drown one's own child is not a normal reaction. This is abhorrent and inhuman.
20. Taking into account all the above circumstances and noting that the accused has spent five (5) years in remand custody, I think the apt sentence is as follows:
21. The accused is sentenced to ten (10) years imprisonment commencing on her first incarceration on remand.
22. The last three (3) years of the sentence shall be served on probation as follows:
- a) The accused shall perform community service for 18 months at a place and in a programme designed by the Probation Officer.
  - b) The balance of 18 months shall be spent in a non-custodial sentence during which time the accused shall attend a rehabilitation programme including counselling on anger management, human relations and child dignity and any other programme designed and facilitated by the Probation Officer.
  - c) The Probation Officer shall maintain a record of all programmes attended by the Accused and such record may be called for by the court at any time.



- d) Should the Accused fall afoul of the law and be convicted for any offence, the 3 year's probation period shall be immediately vacated and the accused shall spend the balance of the term in prison sentence.

**DATED AT KERUGOYA THIS 25<sup>TH</sup> DAY OF JULY 2023.**

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**R. MWONGO**

**JUDGE**

Delivered in the presence of:

State Counsel - Mamba

Wambui - for Accused

Nancy Nyawira Accused - Present in Court

Murage - Court Assistant

