



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Njapit (Criminal Case 14 of 2019)  
[2023] KEHC 19385 (KLR) (3 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19385 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL CASE 14 OF 2019**

**GL NZIOKA, J**

**JULY 3, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**KASAINI MEELI NJAPIT ..... ACCUSED**

**JUDGMENT**

1. The accused was arraigned in court charges with the offence of murder contrary to section 203 as read with section 204 of the Penal Code (Cap 63) of the Laws of Kenya. The particulars of the charge are that on 4<sup>th</sup> December, 2018, at Wellspring Academy in Gilgil Sub-County within Nakuru County he murdered James Ekai.
2. The Information was read to the accused and he pleaded not guilty thereto and the case was fixed for hearing. The pre-trial concluded on 26<sup>th</sup> November 2019 and set for further hearing on 1<sup>st</sup> November, 2021. However, the parties commenced negotiations on plea bargaining but did not materialize immediately.
3. On 19<sup>th</sup> July, 2021 the prosecution called its first witness Margaret Waithera Gecaga and her evidence recorded. However, thereafter the parties commenced plea bargaining negotiations and on 28<sup>th</sup> July 2021, filed a plea bargaining agreement in court.
4. As a result, the charge of murder was substituted with a charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The particulars of the charge remained basically the same save that it was indicated there was no mens rea.
5. The new charge was read to the accused who pleaded guilty thereto and a plea of guilty recorded. The facts were read out to the effect that, on the material day at 6.00pm the accused and the deceased were working at Wellspring Academy in Gilgil Sub-County, Nakuru County working as colleagues, when a quarrel ensued between them over a blanket that was suspected to be stolen.



6. That the accused removed a rungu and hit the deceased once on the head and fell down and became unconscious. He was rushed to hospital where he was admitted and remained in coma until his death on 13<sup>th</sup> April 2019.
7. That the post mortem conducted on the deceased's body revealed that the cause of death was head injury with resolved hematoma secondary to previous blunt trauma to the head five months before death. By that time the accused was charged with offence of grievous harm which was substituted with murder as aforesaid.
8. The accused confirmed that the facts as read to the court were correct and consequently the accused was convicted on his own plea of guilty. The court ordered that the accused's records, pre-sentence report and mitigation be given. The pre-sentence report was filed and so were submissions on mitigation but the records were not availed at all despite the numerous opportunity accorded to the prosecution.
9. Having considered the aforesaid, I note that sentencing is a matter of discretion of the trial court. However, the discretion must be exercised judicially. Thus, in determining the appropriate sentence for an offence, the court should consider the aggravating, mitigating and other factors that are relevant and known to the court and/or any other objective or subjective factor that affects the relative seriousness of the offence.
10. Furthermore, the court should consider the relevant legal principle and/or the principles underpinning the sentencing process as stated under clause 3 of the Sentencing Policy Guidelines here below: -
  - 3.1 Proportionality: 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 behavior is weighted in view of the actual, foreseeable and intended impact of the offence as well as the responsibility of the offender.
  - 3.2 Equality/Uniformity/Parity/Consistency/Impartiality: Same sentences should be imposed for same offences committed by offenders in similar circumstances.
  - 3.3 Accountability/Transparency: The reasons and considerations leading to the sentence should be clearly set out and in accordance to the law and the sentencing principles laid out in these guidelines.
  - 3.4 Inclusiveness: Both the offender and the victim should participate in and inform the sentencing process.
  - 3.5 Respect for Human Rights and Fundamental Freedoms: The sentences imposed must promote and not undermine human rights and fundamental freedoms. In particular, the sentencing process must uphold the dignity of both the offender and the victim.
  - 3.6 International and regional standards on sentencing: Domestic law sets out the precise sentences to be imposed for each offence that courts must adhere to. In addition, international legal instruments, which have the force of law under Article 2 (6) of *the Constitution* of Kenya, should be applied. Reference should also be made to recognised international and regional standards and principles on sentencing, which though not binding, provide



important guidance during sentencing. Relevant international and regional legal instruments and guidelines include but are not limited to the instruments listed under this sub clause.

11. In the same vein, I note the objectives of sentencing as stated under clause 4.1 of the Sentencing Policy Guidelines, should be considered which states as follows: -

- a. Retribution: To punish the offender for his/her criminal conduct in a just manner.
- b. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
- c. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
- d. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
- e. Community protection: To protect the community by incapacitating the offender.
- f. Denunciation: To communicate the community's condemnation of the criminal conduct. 4.2 These objectives are not mutually exclusive, although there are instances in which they may be in conflict with each other. As much as possible, sentences imposed should be geared towards meeting the above objectives in totality.

12. Similarly, the Supreme Court of Kenya in the case of *Francis Karioko Muruatetu & Another vs. Republic* [2017] eKLR gave guidelines on sentencing as follows:

“(71) ..., the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- 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. remorsefulness of the offender;
- g. the possibility of reform and social re-adaptation of the offender;
- h. any other factor that the Court considers relevant.”



13. To revert back to the subject matter herein, I take note of the circumstances of the case, in that the accused did not have the mens rea to commit the offence and seems to have acted out of uncontrollable anger. That he is aged 28 years old, and in deed a first offender.
14. Similarly, I take note of the content of the pre-sentence report detailing the social background of the accused that he is a first born followed by four siblings all who have not attended school at all and have with relatively meagre income. Further the Chief of Maji Moto, stated that the offender does not have any other previous reports of criminality.
15. That, the accused is remorseful of the offence as he did not intend to end his colleague's life and deeply regrets the incident. Further he has heath and eyesight challenges though not supported by documentary evidence.
16. However, the victim's family calls for custodial sentence as the deceased was providing for the children's school fees and plea to the offender to assist has not materialized.
17. In addition, I note that, in accused's mitigation he stated that he pleaded guilty to a lesser charge of manslaughter and committed the offence in the heat of the moment; that he is remorseful, contrite and expresses regret. Further he had no record of conflict with the law while in prison.
18. He further states that he is married with children under his care and sole bread winner of the family, though not supported by the pre-sentence report. He states that he suitable for non-custodial and can reform through training on anger management.
19. Be that as it suffices to note that the offence the accused has been charged with is provided for under section 205 of the [Penal Code](#) which provides as follows: -

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

20. In that regard, it is also noteworthy that loss of life is permanent in nature and no punishment however heavy or otherwise can compensate the same. The impact of loss of a person has far reaching consequences in all aspects, emotionally, socially and financially. The children who were depending on the deceased may as well lose their future life prospects due to inability, for example, to further their education.
21. It is against the aforesaid matters that I find that the sentence meted out should balance the interest of both parties considering both the mitigating and aggravating circumstances of the case as outlined herein.
22. In that case, I order the accused will serve ten (10) years imprisonment effective the date of arraignment in court on 13<sup>th</sup> May 2019. It is so ordered. Right of Appeal within 14 days explained.

**DATED, DELIVERED AND SIGNED ON THIS 3<sup>RD</sup> DAY OF JULY, 2023**

**GRACE L NZIOKA**

**JUDGE**

In the presence of:

The accused present, virtually

Mr. Wairegi for the accused

Mr. Atika for the State



Ms. Ogutu court assistant.

