



**Republic v Wanjuki (Criminal Case 30 of 2019)
[2023] KEHC 21565 (KLR) (3 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21565 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 30 OF 2019
PM MULWA, J
AUGUST 3, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

MARY WANJIKU WANJUKI ACCUSED

RULING

1. The accused herein MWW was initially charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. As per the information dated July 19, 2019, the particulars of the offence are that on the 27th day of June, 2019 at Riuriro area of Juja Sub- County within Kiambu County murdered CW aged 5 months.
2. On July 30, 2019, the accused pleaded not guilty to the charges of murder and the case was set down for hearing. On March 5, 2020 five (5) prosecution witnesses testified, that is Pw1 - Pw5. The case was set for further hearing on various other dates but for one reason or another did not proceed.
3. On February 10, 2022, when the matter came up for hearing, the accused and her counsel informed the court they intended to enter into a plea bargain with the state. The learned state counsel had no opposition to a plea bargain being pursued.
4. A plea bargain agreement was executed on October 3, 2022 was filed in court on December 15, 2022. Subsequently, the prosecution dropped the charge of murder and substituted the same with manslaughter. According to the substituted information the accused person was charged with the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The particulars of the charge are that on the 27th day of June 2019 at Riuriro area of Juja Sub-County within Kiambu County unlawfully killed CW aged 5 months.
5. The accused person admitted to the manslaughter charge and the facts as stated by Mr. Kasyoka the state counsel and was convicted on her own plea of guilty.



6. According to the prosecution the accused had no previous records and was to be treated as a first offender.
7. In mitigation Ms. Gathua for the accused person submitted that the accused is remorseful for what happened and she regrets her actions that took the life of her daughter. That for the time she has been in remand she has taken biblical courses and she is now born again. She has further attained knitting skills and intends to use them to benefit herself and her children. The accused is a mother of 4 children one aged 13 years who is disabled and whom she intends to take care of. She urged the court to grant her a non-custodial sentence and undertakes to abide by the conditions set by the court.
8. The court called for a pre-sentencing report, which was filed on June 9, 2023. According to the report, the local administration in Riuriro suggested that the accused could be considered for a non-custodial sentence. The Manager Saljin Foundation where the accused's children are housed was of the view that it was in the children's best interest that they reunite with the mother but the children be allowed to complete school. The accused blames her action on alcohol which she vows to stop taking.

Determination

9. I have considered the facts as presented by the prosecution and the accused person's mitigation as well as the post-mortem report produced as exhibit. The issue for determination is the appropriate sentence to be meted on the convicted person.
10. Under section 205 of the *Penal Code* a conviction for manslaughter is punishable by a maximum sentence of life imprisonment. The accused/convict herein pleads with the court for a non-custodial sentence. She is remorseful of her actions and has reformed.
11. The post-mortem indicates the cause of death was head injury due to blunt force trauma in the head. The body of the deceased was found lying dead with whitish foam oozing from her nose at their home. According to the convict she tried to flee her home after a domestic quarrel with her husband and picked the 5-month-old baby who fell down accidentally.
12. The pre-sentence report describes the convict as a mother of 4 children, aged 34 years who engaged in taking alcohol and neglected her children.
13. In reaching at my decision, I have considered the following: -
 - i). The convict is a first offender
 - ii). The conditions under which the deceased met her death;
 - ii). The convict's mitigation;
 - iii). The pre-sentence report and the recommendations therein;
 - iv). The time taken by the convict before engaging the prosecution for a plea bargain and admission of the lesser charge of manslaughter.
14. The accused pleads for a non-custodial sentence while the prosecution is silent on the term(s) of sentence.
15. The offender is a relatively young lady aged 34 years and a mother of four children. In light of the totality of the circumstances of this case and taking into account the sentencing objectives, this court in exercising its jurisdiction sentences the convict to four (4) years imprisonment for manslaughter contrary to section 202 as read with section 205 of the *penal code*.



16. In accordance with section 333(2) of the *Criminal Procedure Code*, the court should take into account the time spent in remand which should be deducted from the sentence considered appropriate. I note the convict was charged on July 19, 2019, and has been in custody since then. I hereby take into account and set off a period of four (4) years as the period the convict has already spent in remand.
17. Consequently, I find that she has served her sentence and direct that she be set at liberty forthwith unless otherwise lawfully held.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 3RD DAY OF AUGUST 2023.

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P.M. MULWA

JUDGE

In the presence of:

Duale – court assistant

Mr. Muriuki for the state

Ms. Mburu h/b for Ms. Gathua for the accused person

Accused - present

