



**Republic v BN alias K (Criminal Case 2 of 2020)
[2023] KEHC 22302 (KLR) (21 September 2023) (Sentence)**

Neutral citation: [2023] KEHC 22302 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL CASE 2 OF 2020
WA OKWANY, J
SEPTEMBER 21, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

BN ALIAS K ACCUSED

SENTENCE

1. The accused herein was initially charged with Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The accused and the prosecution entered into a plea bargain agreement in which the accused admitted a lesser charge of Manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.
2. The particulars of the charge were that on the night of 30th and 31st day of January 2020 at Ogango Sub-location, in Manga Sub-county within Nyamira County, unlawfully caused the death of Kennedy Anyari Ajuri (deceased).
3. The facts of the case were that on the night of 30th and January 31, 2020, the deceased was in company of other mourners who had gone for a disco matanga at the home of a neighbor namely Nyakundi. While there, there arose some fracas among the mourners who were drunk. The said fracas was contained and mourners went on with their business as usual.
4. At about 4. 00 Am., the deceased was seated near a bonfire which they had lit during the night vigil. The accused who was among the mourners is said to have moved towards fire place while armed with a wooden stick and hit the deceased on the head. The deceased namely Kennedy Onyari Ajuri fell into the fire and was rescued by members of the public. He was then rushed to Nyamira County hospital and admitted while in a serious condition.
5. The accused namely BN alias K immediately after assaulting the deceased disappeared from the scene with some members of the public giving a chase. He disappeared into the darkness.



6. On the night of 31st day of January 2020 at about 9.00 pm, the deceased succumbed to injuries while undergoing treatment at the same facility.
7. A post mortem examination of the body of the deceased revealed that he died of severe head injury secondary to blunt trauma.
8. The prosecution asked the court to treat the accused as a first offender.
9. In mitigation, Mr Kaba for the accused stated that the accused is remorseful and regrets his actions. He noted that the accused is a young man and the sole bread winner for his family. He urged the court to consider the Probation Officer's Report and grant a non-custodial sentence.
10. I have considered the mitigation made by Mr Kaba, Learned Counsel for the accused, I have also considered the Probation Officer's Pre-sentence Report which favours a non-custodial sentence owing to the accused's tender age of 17 years as at the time the offence was committed. I note that the accused pleaded guilty to a lesser charge of Manslaughter thereby saving this court the time and resources that would have been spent on a lengthy trial.
11. The accused has also been in custody awaiting his trial and must have learnt a few lessons on the importance of being a law abiding citizen.
12. I note that the offender is a fairly young man (Minor) aged 17 years. He is reported to be a Secondary School leaver. I also note that the deceased was an equally young man aged 24 years and married with a very young family. The Probation Officer's Report reveals that his death has dealt a devastating blow to his family.
13. I have considered the fact that a precious life was lost through what started as a fracas at a funeral vigil. Every life is precious and I am of the view that the accused should have walked away from the violent confrontations. It is also clear, from the facts of the case, that the deceased was not an aggressor. The Probation Officer reports that the families of the accused and the deceased have made peace and that the accused's community are willing to take him back to their midst despite the unfortunate death of the deceased.
14. Manslaughter attracts punishment of up to life imprisonment. The court however, has discretion, depending on the circumstances under which the offence was committed, to impose a lesser sentence.
15. Taking into account the totality of the circumstances of the case and the accused's tender age, I find that a non-custodial sentence would be appropriate for him to be rehabilitated and reform.
16. I hereby exercise discretion and sentence the accused herein Boniface Nyakundi alias Kamani to serve three (3) years' probation term under the Nyamira County Probation Officer on the following conditions: -
 - i. The accused must obey the supervising Probation Officer and comply with any conditions set by the Probation Department;
 - ii. He must be of good conduct;
 - iii. He must not commit any offence during the probation period;
 - iv. The accused must attend guidance and counselling on anger management to be organized by the Probation Department;
17. The accused is warned that if he breaches any of the above conditions he will be arrested and brought back to this court and that the court may pass a custodial sentence.



18. It is so ordered.

**SENTENCE DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS
THIS 21ST DAY OF SEPTEMBER 2023.**

W. A. OKWANY

JUDGE

