



**Republic v Nyanamba (Criminal Case E002 of 2022)
[2023] KEHC 22314 (KLR) (21 September 2023) (Sentence)**

Neutral citation: [2023] KEHC 22314 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL CASE E002 OF 2022
WA OKWANY, J
SEPTEMBER 21, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

FELIX ONGARO NYANAMBA ACCUSED

SENTENCE

1. The Accused, Felix Ongaro Nyanamba, was originally charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#), Cap 63 Laws of Kenya. The particulars of the offence were that on the 24th day of January 2022, at about 21.30hrs at Rigoma market, Biticha sub-location, West Kitutu location in Masaba North Sub-County within Nyamira County, jointly with others not before Court murdered Jackson Mokaya Momanyi alias Mokeyoyo.
2. The Accused was arraigned before Ochieng J. on February 8, 2022 where he took plea and denied the charge. The matter proceeded to trial. On July 6, 2022, the Prosecution Counsel informed the Court that the parties wished to explore the option of plea bargaining. The Court allowed the prayer and subsequently adopted, as part of its Record, a Plea Bargain Agreement dated and filed on March 21, 2023 entered into between the Accused and the State.
3. On the same date, the Prosecution proffered the lesser offence of manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#) on the Accused person to which the Accused pleaded guilty. The facts on the Information were also read to the Accused and he accepted them as correct. Subsequently, this Court entered a plea of guilty and convicted the Accused on his own plea of guilty for the offence of manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#).
4. This Court directed that a pre-sentence Report and Victim Impact Statement be filed for its consideration before sentencing. The same was filed on June 6, 2023.



5. The objectives of sentencing are outlined in [The Judiciary Sentencing Policy Guidelines](#) (2016) at paragraph 4.1 as follows:-

“4.1 The sentences are imposed to meet the following objectives: -

1. Retribution.
2. Deterrence.
3. Rehabilitation.
4. Restorative justice.
5. Community Protection.
6. Denunciation.”

6. It is now a well-established legal principle that sentencing is a matter that rests with the discretion of the trial court. However, such discretion must be exercised judiciously and in accordance with set legal principles. The Supreme Court of Kenya, in the now famous precedent of [Francis Karioko Muruatetu & Another vs Republic](#), Petition No 15 & 16 [Consolidated] of 2015, listed some of the factors that must be considered during sentencing as follows: -

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

- i. The Age of the offender
- ii. Being a first offender
- iii. Whether the offender pleaded guilty
- iv. Character and record of the offender
- v. Commission of the offence in response to gender-based violence
- vi. The manner in which the offence was committed on the victim
- vii. The physical and the psychological effect of the offence on the victim’s family
- viii. Remorsefulness of the offender
- ix. The possibility of reform and social re-adaptation of the offender
- x. Any other factor the court considers relevant”

7. In consonance with the above, paragraph 23.8 on page 49 of the [Policy Guidelines](#) further suggests mitigating circumstances as follows: -

“23.8 Mitigating circumstances warrant a more lenient penalty than would be ordinarily imposed in their absence. They include:-

1. A great degree of provocation.



2. Commitment to repairing the harm caused by the offender's conduct evidenced by the actions such as compensation, reconciliation and restitution prior to conviction.
3. Negligible harm or damage caused.
4. Mental illness or impaired functioning of the mind.
5. Age, where it affects the responsibility of the individual offender.
6. Playing of a minor role in the offence.
7. Being a first offender.
8. Remorsefulness.
9. Commission of a crime in response to gender-based violence.
10. Pleading guilty at the earliest opportunity and cooperation with the prosecution and the police.

8. Sentences must ultimately reflect the seriousness of an offence which then means that every sentence passed by a court of law should be commensurate to the offence committed by an accused. This principle was espoused by Howie, Grove and Barr JJ in *R vs Scott* (2005) NSWCCA 152 thus: -

“There is a fundamental and immutable principle of sentencing that this sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed in the circumstances of the crime committed...One of the purposes of punishment is to ensure that an offender is adequately punished...a further purpose of punishment is to denounce the conduct of the offender.” (Emphasis added)

9. The Accused person in this case was convicted of the offence of manslaughter whose punishment is encapsulated in Section 205 as follows: -

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

10. In line with the above, I have considered the fact that the convict was a first offender, a young man of 37 years and married with three school-going children. The Pre-Sentence Report also indicated that the Accused was generally a law abiding citizen prior to this offence. He is said to be hardworking and dependable by his family and the community. The *Criminal Procedure Bench Book* at page 116 paragraph 24 provides that a maximum sentence should never be imposed on a first offender.

11. From the Pre-Sentence Report, the Accused is remorseful of his actions. His family has since taken steps to reconcile with the deceased's family and further conducted a traditional cleansing ceremony. Even though the family of the deceased was devastated by the loss of their son, they had forgiven the Accused and are willing to welcome him back to the community to continue taking care of his family. This Court further recognizes that the Accused willingly accepted his crime and saved the Court precious judicial time by embracing plea bargain.



12. It is also pertinent to consider the circumstances during and after the commission of the offence in determining the appropriate sentence. In the case of *Benson Ochieng & Another vs Republic* (2018) eKLR, Ngugi J. (as he then was) stated thus: -

“Re-phrasing the Sentencing Guidelines, there are four sets of factors a Court looks at in determining the appropriate custodial sentence after determining the correct entry point (which, as stated above, I have determined to be fifteen years imprisonment). These are the following:

- a. Circumstances surrounding the commission of the offence: The factors here include:
 - i. Was the Offender armed? The more dangerous the weapon, the higher the culpability and hence the higher the sentence.
 - ii. Was the offender armed with a gun?
 - iii. Was the gun an assault weapon such as AK47?
 - iv. Did the offender use excessive, flagrant or gratuitous force?
 - v. Was the offender part of an organized gang?
 - vi. Were there multiple victims?
 - vii. Did the offender repeatedly assault or attack the same victim?
- b. Circumstances surrounding the Offender: The factors here include the following:
 - i. The criminal history of the offender: being a first offender is a mitigating factor;
 - ii. The remorse of the Applicant as expressed at the time of conviction;
 - iii. The remorse of the Applicant presently;
 - iv. Demonstrable evidence that the Applicant has reformed while in prison;
 - v. Demonstrable capacity for rehabilitation;
 - vi. Potential for re-integration with the community;
 - vii. The personal situation of the Offender including the Applicant’s family situation; health; disability; or mental illness or impaired function of the mind.
- c. Circumstances Surrounding the Victim: The factors to be considered here include:
 - i. The impact of the offence on the victims (if known or knowable);
 - ii. Whether the victim got injured, and if so the extent of the injury;
 - iii. Whether there were serious psychological effects on the victim;



- iv. The views of the victim(s) regarding the appropriate sentence;
- v. Whether the victim was a member of a vulnerable group such as children; women; Persons with disabilities; or the elderly;
- vi. Whether the victim was targeted because of the special public service they offer or their position in the public service; and
- vii. Whether there been commitment on the part of the offender (Applicant) to repair the harm as evidenced through reconciliation, restitution or genuine attempts to reach out to the victims of the crime.”

13. The facts of this case reveal that the Accused and the deceased were friends and at the time of commission of the offence. They were in the company of other friends consuming alcohol. The facts further indicate that a quarrel ensued between one Bernard Mokaya, who is a suspect at large, and the deceased. The Accused however later entered into the fray and they beat up the deceased and fatally wounded him.
14. I have considered the gravity of the offence and in particular, the manner in which the Accused and his friends beat up the deceased, covered his head with his jacket and stabbed him on the back. It is apparent that a senseless brawl led to the brutal loss of a young life.
15. It is the view of this Court that the law exists to create order in our society and protect the community. This Court appreciates the need to send out a stern warning to young people who consume alcohol and in turn engage in activities that result in criminal conduct. While the Pre-Sentence Report recommends a lenient sentence, I am of the view that the offence committed by the accused warrants a deterrent sentence which, in this court’s view certainly cannot be non-custodial in nature.
16. Considering at the totality of the facts of the case, I find that the appropriate sentence is imprisonment where the accused can be rehabilitated so that he can reflect on his actions in order to become a better citizen. Needless to say, the nature of the offence is such that a deterrent sentence is necessary so as to protect the society from violent individuals.
17. Consequently, I sentence the Accused to serve eight (8) years imprisonment. In light of the provisions Section 333(2) of *Criminal Procedure Code* the sentence period shall take into consideration the period that the Accused spent in pre-trial custody (See *Bethwel Wilson Kibor vs Republic* [2009] eKLR). In this regard, the sentence shall run from January 25, 2022, being the date of his arrest.
18. Orders accordingly.

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

W. A. OKWANY

JUDGE

