



**Republic v Njoroge (Criminal Case 48 of 2017)
[2024] KEHC 14455 (KLR) (14 November 2024) (Sentence)**

Neutral citation: [2024] KEHC 14455 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 48 OF 2017
RB NGETICH, J
NOVEMBER 14, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

DAVID KARIUKI NJOROGE ACCUSED

SENTENCE

1. By judgement delivered on the 27th day of September,2024, the accused David Kariuki Njoroge was found guilty and convicted for the offence of manslaughter contrary to section 202 as read with 205 of the *penal code*. The particulars of the charge were that the accused on the 11th day of November,2017 at Turi Trading Centre in Molo Sub- County within Nakuru County murdered Isaac Karuiki.
2. Upon delivery of judgment, the prosecution informed this court that the accused had no previous record and he could be treated as a first offender. The court directed that pre-sentence report be filed before mitigation.

Pre-sentencing Report

3. From presentence report, the accused was born in the year 2001 in Kuresoi South Sub- County and later relocated to Nyandarua due to post election violence in the year 2007.He studied in Njomo primary school and obtained 377 marks out of 500 in KCPE. He secured a position at Nyahururu boys' High school but due to family financial constraints, he was forced to attend the local rural school, Mawingu secondary school. He attained a mean grade of D+ in KCSE in the year 2019.
4. At the time of the offence herein, the year 2017, the accused was in form two, and was on school holiday. He was granted bond in the year 2018 and he resumed school and completed form 4. Since then, the accused was employed as a salesman in one of the boutiques in Kericho until the year 2024 June when he opened up his own business of selling shoes in different markets within Kericho County.



5. According to the accused, he did not commit the offence but however appreciates this court for court for giving him a chance to participate in the trial process. He acknowledges he was found guilty and pleads with the court to extend leniency to him. He condoles with the victim's family and wishes he could be given a chance to seek forgiveness and allow him condole with the family. He is willing to seek reconciliation with the assistance of his family. He prays for leniency.
6. Circumstances of the offence are that the accused had visited one of his relatives, a resident in Turi molo area. Parents and grandparents of the primary victim said that the victim was a third born in a family of four children and by the time of death, he was student at Chandera secondary in Turi Molo. They indicated that both accused and the victim were minors at the time of the offence and also believe the accused had no intention of killing the victim.
7. Families of both accused and the victim had a meeting at the Chief's office where reconciliation was initiated and both parties agreed to forgive the accused. They are willing to achieve full reconciliation with the family of the accused if granted time. They support non-custodial sentence to be imposed against the accused if the court will deem fit.
8. The offence occurred far from accused's home and he was therefore not known to the community. The area chief of Turi Location indicated that the offence took place years back and confirmed that both parties have reconciled. She is therefore supportive of the non-custodial sentence.
9. The community where the accused comes from, Mawingu Location in Nyandarua was not aware of the incident herein but upon his arrest, some few close neighbors got to know of the incident. They describe accused as being hardworking both in school and at home and was known to engage with other members of the community well. The area chief echoes the sentiments of the community members. She states that the accused had not been involved in any criminal activity prior to the offence and was known to be a hardworking person in school and home. She confirms that that the accused will be safe if granted non-custodial sentence.

Mitigation

10. The defence counsel Mr. Ndubi mitigated on behalf of the accused. He submitted that the accused is remorseful and he has instructed him to appeal for mercy. He submitted that the accused was 17 years old at the time of arrest and was therefore a minor who was then in form 2 and for the last 7 years, he has carried the burden and the torture of being charged with the offence herein. He submitted that the accused comes from a humble background and although he did well at primary level examinations, he was admitted to Nyahururu High School but due to poverty he was not able to join the school and joined a local school; that he did not perform well in KCSE; he attained a mean grade of D+ partly because he has been traumatized and he appeals to this court to consider giving him a non-custodial sentence; his desire is to join a college and acquire skills so as to progress in career development.
11. Counsel submitted that the accused has reached to the family of the deceased who lost a young man who was in form 4 and they have completely forgiven him. That the families have reconciled considering this is a first offender who regrets the loss of life. He urged this court to give the applicant a second chance as he does not have criminal records and his behavior has been excellent. That the loss of life was an accident as the deceased was a stranger to him. He appealed for leniency in light of the background and the circumstances of the offence, character and fact of reconciliation between the two families.
12. The prosecution counsel Mr. Kihara submitted that he has looked at the pre-sentence report and concur with the sentiments save for the recommendations in regard to 3-year probation which he believes



should be left for the court to consider suitable sentence and as regards reconciliation, he submitted that they were not furnished with documents to confirm reconciliation and it is wrong to say that reconciliation was done yet it was not initiated. He urged the court to look at the circumstances under which the offence occurred and impose appropriate sentence so as to deter and give the family of the victim a closure.

Determination

13. Under section 205 of the *Penal Code* a person convicted of Manslaughter is liable to imprisonment for life, however the court in Malindi Criminal Appeal No. 12 of 2021 between *Julius Kitsao Manyeso vs Republic* declared life imprisonment unconstitutional.
14. From the presentence report, the family of the deceased and accused met and reconciled. They are both agreeable to non-custodial sentence. Minutes of reconciliatory meeting have been attached to the presentence report which confirms that reconciliatory meetings are ongoing. The victim's family confirm that at the time of the incident, both the victim and the accused were minors and they have decided to forgive the accused for the offence.
15. I have also considered the circumstances under which the offence occurred; there is no doubt that the offence was not premeditated; the incident occurred as a result of confrontation between two groups of students who had visited the home to celebrates the initiates who were brothers to their classmate pw4 herein. I also take note of the fact that the accused was a minor at the time of the offence and the effect the pendency of this matter has had in his life.
16. The local administration also support non-custodial sentence. In view of the above, I find that community-based rehabilitation will be appropriate to the accused.
17. Final Orders: -
Accused to serve 2 years' probation sentence.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 14TH DAY OF NOVEMBER 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

Justine Lesanke, Court Assistant.

Mr. Ndubi for accused.

Ms. Ratemo holding brief for Mr. Kihara for State.

Accused present.

