



**Republic v Andiiego (Criminal Case E022 of 2024)  
[2024] KEHC 16701 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16701 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE E022 OF 2024  
A MSHILA, J  
DECEMBER 6, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**VICTOR ODHIAMBO ANDIIEGO ..... ACCUSED**

**RULING**

1. The accused was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; upon a Plea Bargain Agreement being entered the charge was reduced to manslaughter;
2. The Plea Bargain Agreement was adopted by the court upon it being satisfied that the accused had understood the contents and that he had executed it voluntarily without promise or benefit, threats, force, intimidation or coercion of any kind;
3. The accused was charged with having unlawfully killed his child James Ochieng Andiiego on the 17<sup>th</sup> December, 2023 at Lunga Lunga Area Makadara within Nairobi County; he was convicted on his own plea of ‘Guilty’ of the offence of Manslaughter c/s to Section 202 as read with Section 205 of the Penal Code;
4. The facts as read out by the Prosecuting Counsel are as follows; The accused had met a lady called Sheila and became friends leading to them living together in Ruiru as husband and wife; they were blessed with a son James Ochieng (the deceased) born on 21/11/2020; a copy of his Birth Certificate was produced into court and marked as ‘PEXh.1’; in February,2023 Sheila got employment as a house-girl in Kahawa and both parties agreed that she should take up the job offer and live with the child; the accused would visit but difference arose as the accused suspected that she had another boyfriend as she stopped picking up his calls;



5. In November, 2023 the accused met the 2<sup>nd</sup> accused on Facebook and became intimate friends; The 2<sup>nd</sup> accused visited the 1<sup>st</sup> accused and found him with the child who had come over to visit his father upon his fathers' request; the 2<sup>nd</sup> accused was shocked and surprised and the 1<sup>st</sup> accused's explanation was that the child had been abandoned by the mother; the 2<sup>nd</sup> accused visited for five (5) days and the arrangement was that the 2<sup>nd</sup> accused would take and live with the child and the 1<sup>st</sup> accused would visit them;
6. On Christmas Day that 25/12/2023 Sheila the mother of the child left work to visit the child at the 1<sup>st</sup> accused house; when she got there she found the 1<sup>st</sup> accused and 2<sup>nd</sup> accused but the child was missing upon inquiring of his whereabouts she got no response from the two who instead fled from the house;
7. Sheila reported the incident to the Chiefs Office and was directed to make a report of a missing child to Karanjee Police Post; investigations commenced and a search conducted that led to the arrest of the 1<sup>st</sup> accused; the 2<sup>nd</sup> accused was later arrested on 12/05/2024 by officers from Lunga-Lunga Police Station.
8. From the investigations it was revealed that during the child's stay with the 2<sup>nd</sup> accused the 1<sup>st</sup> accused called in to visit carrying a packet of chips and yoghurt which he gave the child to eat; later the child complained of stomach ache and into the night the child kept complaining; the next day he was taken to day care but got worse and was rushed by the 2<sup>nd</sup> accused and the neighbours to Mama Lucy Hospital.
9. The letter dated 25/05/2024 from Mama Lucy Hospital indicated that the child was Dead on Arrival; on 30/05/2024 a Post Mortem was conducted and the doctor in his Report produced and marked as 'PEXh.3' had stated that he was unable to ascertain the cause of death; the doctor took specimens and vide the Exhibit Memo produced and marked as 'PEXh.4' and dated 30/05/2024 was sent the same to the Government Analyst for toxicology analysis; the Report was produced and marked as 'PEXh.5' and it indicated the presence of poison was found in the Childs' stomach and liver; The evidence corroborated that of the 1<sup>st</sup> accused that he had bought a pesticide known as 'RAT-RAT' which he had mixed with the chips and yoghurt;
10. The accused stated that the facts as narrated were correct and the court proceeded to convict him on his own plea of 'Guilty' for the offence of Manslaughter c/s to Section 202 as read with Section 205 of the Penal Code;
11. The accused was represented by Learned Counsel Mr. Mathenge whereas Mr. Gacharia was the Prosecuting Counsel for the State; Both Counsel were invited to make submissions before sentencing;
12. In mitigation counsel for the accused submitted that prior to the commission of the offence the 1<sup>st</sup> accused was a man of good character; The socio-economic factors pressured him to commit the crime in that he was unemployed and was struggling to make ends meet; his parents preferred the Sheila the mother to the child and were opposed to the 2<sup>nd</sup> accused; he also had issues with the mother of the child which led him to the commission of the offence; it was an unfortunate situation in which a life was lost; the accused was very remorseful and seeks forgiveness from Sheila's family and from the court; the accused whilst in remand has had time to reflect on his actions and has taken positive steps to manage his anger and to regain control of his psychological wellbeing; this was done through courses undertaken at the prison on handling emotions;
13. The 1<sup>st</sup> accused had readily pleaded guilty at the earliest onset and thus saved on judicial time; he was extremely remorseful and prayed for justice to be tempered with mercy; he prayed for leniency as he had learnt his lesson and having received training on life skills the accused was ready to be integrated back into society and prayed for a lenient sentence preferably a non-custodial;



14. Counsel pleaded for leniency and urged the court to consider the time spent in custody from 13/05/2024 to date and deem it as term spent; in the alternative to impose a non-custodial sentence;
15. Prosecuting Counsel had requested for a Victim Impact Assessment to be conducted and a Report be submitted to assist the Court in determining an appropriate sentence; Counsel submitted that a life once snuffed out was irrecoverable and it was imperative that the family of the deceased receive justice; the prosecution had no previous records of the convict;

### **Analysis**

16. The applicable law on sentencing for the offence of manslaughter is found under the provisions of Section 205 of the Penal Code which reads as follows;

‘Any person who commits the felony of manslaughter is liable to imprisonment for life’

17. The Court of Appeal however has declared the life sentence to be unconstitutional and has held that an accused person may receive a sentence that could potentially allow him a chance of parole and release at some point in time; The above notwithstanding, it is the duty of this Court to impose a sentence that meets the facts and circumstances of the case;
18. The aggravating factors would have been if a dangerous weapon had been used to snuff out the life of the child; in this instance there was no evidence provided by the prosecution of such a weapon being used by the accused; the only aggravating factor would be the lack of anger management that led to the unfortunate incident which then led to a needless loss of an innocent precious life and all the accused was interested in was the acquisition of what he believed to be freedom to continue his association with the 2<sup>nd</sup> Accused; despite his pre-occupation with his socio- economic stressors he ought to have exercised restraint; the mitigating factors are that the accused is a young man aged 26 years and he is found to have no previous record and is deemed to be a first offender; last but not least is by accepting the Plea Bargain Agreement the accused had not wasted judicial time;
19. Other factors taken into consideration is the Victim Impact Assessment Report; Having perused the Report the Sheila who is mother of the victim has not forgiven the accused as neither the accused or his family had taken reconciliatory steps with her; it is noted that she has not come to terms with the child’s demise and is in the process of seeking psycho-social support from her church and plans to enroll in professional counseling sessions;
20. In the light of the aggravating factor this Court finds that a custodial sentence will serve as a strong deterrent to spiteful and jealous partners/spouses who engage in actions that have such unfortunate consequences.
21. This court is satisfied that the accused is undeserving of leniency and or a non-custodial sentence and is instead deserving of a custodial sentence that would be a deterrent to others harbouring such evil thoughts and finds a custodial sentence of Ten (10) years to be an appropriate sentence.
22. He is found to be deserving of the benefit of proviso to Section 333(2) of the Criminal Procedure Code which section requires this court to take into account the time the offender spent in custody during the trial. The period he was remanded can be deducted from the sentence.

### **Findings & Determinations**

23. Having taken all factors into consideration this Court makes the following findings and determinations;



- i. The accused is convicted on his own plea of guilty for the offence of Manslaughter;
- ii. The accused is hereby sentenced to a ten (10) years custodial sentence.
- iii. The period spent in custody from date of arrest on May 13, 2024 to the date of sentencing be deducted from his term of sentence.

**DATED, SIGNED AND DELIVERED VIA AT KIAMBU THIS 6<sup>TH</sup> DAY OF DECEMBER, 2024.**

**A. MSHILA**

**JUDGE**

In the presence of;

Sanja – Court Assistant

Mathenge – for the 1<sup>st</sup> Accused

1<sup>st</sup> Accused – present in court – in custody

