

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL CASE NO. 22 OF 2018

REPUBLIC-----PROSUCTION

VERSUS

STEPHEN OTIENO-----ACCUSED

SENTENCING

1. The accused person was charged with the offence of Murder contrary to Section 203 as read with 204 of the Penal Code.
2. The particulars of information were that Stephen Otiemo, between the 18th and 26th August, 2017 and at unknown time in Riruta Satellite in Dagoretti Sub-County within Nairobi County murdered Tamara Deborah alias Njoki.
3. The accused person entered into a Plea negotiation with the prosecution which led to a reduction of the charge from that of murder to manslaughter contrary to Section 202 as read with 205 of the Penal Code.
4. A plea agreement dated 20th day of February 2025 was filed and adopted by the court. On two previous occasions but finally the accused person agreed to plead guilty to the lesser offence of Manslaughter.
5. On that date, the manslaughter information was read to the accused person in Kiswahili and in answer thereto he stated ‘**ni ukweli**’ meaning it is true. A plea of guilty was therefore entered and the facts set out in the plea agreement were read out to the accused person by the prosecutor.
6. The facts read as follows: “
7. The accused person was charged with the offence of Murder contrary to section 203 as read with section 204 of the Penal Code which has now been

substituted to that of Manslaughter contrary to section 202 as read with section 205 of the Penal Code.

8. Tamara Deborah alias Njoki (deceased) was born in 2015 to Ruth Auma Okeyo. Her biological father and mother went separate ways. In the year 2016, her mother met Stephen Otieno (accused person). They began cohabiting as husband and wife at Riruta Satellite.
9. In April, 2017, the couple was blessed with twin daughters namely Lea Apiyo and Rachael Adongo.
10. Deceased's mother was working at Securex Security company as a security guard. Her working station was at Nakumatt Junction Mall along Ngong road.
11. On 18/08/2017, deceased mother left her house at around 5: 00am to go to work. She left accused person and her three children still asleep.
12. Her house help namely Beatrice Wavuva who was a day scholar came to the house at 5.30 am to do her daily chores. She found the three children and the accused person still asleep.
13. At around 6:30 am, the deceased woke up followed by the accused person. The accused person instructed the house help to change deceased's clothes as he wanted to go with her to the shop.
14. The house help dressed the deceased in a jumper, panty, trouser and sandals.
Accused then left the house with deceased who had not even taken breakfast. They two did not come back for lunch or supper.
15. At around 7:30 pm, deceased's mother came back from work, she found the house help with the twins minus accused and deceased. The house help told her that the accused left with deceased early in the morning hours and they had not returned to the house.
16. Deceased mother called the accused through his mobile phone number; it could not go through since it was switched off. The deceased mother then

called her brother to find out if he had seen or heard from the accused and or deceased.

17. The following day i.e. 19/08/2017 at around 6:18 am, deceased mother was washing clothes outside her premises when the accused person came back to the house alone.: he entered the house; the deceased mother followed him to ask where he left and or took the deceased the previous day. Accused informed her that the deceased was on her way coming to the house.
18. Deceased's mother went back outside to continue washing her clothes. She prepared herself and left for work at 7:30 am. By that time, her the house help had come though the accused had left again without explaining where he was going.
19. Deceased's mother reported to Riruta Police station that the accused took the deceased and had not brought her back. She was seeking police assistance in arresting the accused with a view to him being compelled to reveal where he took the deceased whose whereabouts were still unknown.
20. By that time, the accused person was still at large and his mobile phone was also. switched off his phone for a week without communicating with any of his family members.
21. Family members from both sides stepped up their efforts in search for both accused and the deceased in hospitals, mortuaries and among family and friends.
22. On 26th August 2017, a good Samaritan sighted accused in a hotel within Wanyee in Riruta satellite. He in turn tipped his two brothers who went to the place, arrested and escorted him to Karen police station for questioning.
23. Accused refused to divulge where he left the deceased. This prompted his brothers to request police officers at Karen Police Station to transfer him to Riruta police station where case of missing child had been reported by deceased's mother earlier on.

24. Upon interrogation, the accused said that he had left the deceased in Thogoto forest on 18/08/2017 and did not know what may have happened to her thereafter.

On 27th August, 2017, accused led police officers from Riruta police station and other relatives to Thogoto forest. They searched for deceased within the place but were unsuccessful after a three-hour search.

26. The investigating officer returned accused to Riruta Police Station, charged him in Kibera in CR 3019/2017 with one count of abduction contrary to sec 258 of the penal code.

27. On 02/09/2017 while the accused was still in police cells, he called his cousin John Odhiambo Otieno and informed him exact location in Thogoto forest where they would find the deceased's body. On the same day the deceased relatives together with the help of the forest guard went in search of the deceased at the forest.

28. As the team searched different part of Thogoto forests, they came across a trouser, a pant and sandals which were identified by deceased mother belonging to the deceased.

29. Additionally, the search team recovered a national Identify card, a phone make X- tigi which were identified by the deceased mother belonging to the accused person.

30. The search team also recovered some used and unused tissue paper with unknown medicine tablets placed next to the deceased clothes. They did not find the deceased or her body at the scene.

31. The search team collected the mentioned items and handed them over to Riruta police to help them in investigation.

32. On 14/09/2017, police officers from Riruta police station led by their OCS Chief Inspector Ng'eno visited Thogoto forest. They recovered a jumper, a skull and a bones which they collected and kept as exhibits.

33. The investigation was taken over by DCI Dagoretti. All the items recovered at the scene were forwarded to the government chemist for analysis. The skull and bones were forwarded to city mortuary for analysis.
34. The post mortem on skull and bones was conducted at City Mortuary on the 13/12/2017. Dental age assessment revealed that the skull was approximate age 30- 36 months while and the skeletonized remains were found to be incomplete.
35. The pathologist formed an opinion that the cause of death was undetermined human skeletonized remains. He directed that the skeleton specimen be taken to government chemist for DNA.
36. A report from the government chemist dated 26th March 2018 revealed that;
- (a) DNA profile generated from the pant and the tissue paper matched the DNA profile generated from the buccal swab of the accused with a profanity of a match 1.62×10
 - (b) The DNA profile generated from the blood stain on the jumper-shirt and a pant
- matched the DNA profile generated from the skull and the bone sample with a probability of a match 1 in 2.55×10
37. On 27th April 2018 the state file filed a nolle prosequi to terminate abduction charges at Kibera law court. Consequently, accused person was arraigned before the High Court in Milimani to answer to one count of murder contrary to sec 203 as read with sec 204 of the penal code.”
7. Upon the facts being read to the accused person, he confirmed that the facts were true and correct thereby admitting the commission of the offence.
8. The court convicted the accused person on his own plea of guilty for the offence of manslaughter contrary to Section 202 as read with 205 of the Penal Code.

9. The prosecution counsel moved the court to allow the mother of the deceased one Ruth Okeyo to give a victim impact statement as she was present in court.

10. The court allowed the application and Ruth Akeyo was sworn and stated the following:

“as the deceased’s mother I have suffered. I thought Stephen the accused was a good person. I did not know he could commit such an act. The act was unjustified since the child had not wronged him in any way. No one should take the life of another other than God only. I had stayed 6 years without getting a child before I gave birth to the deceased. The child did not hurt the accused in any way. If I had offended him, why could he not kill me if he had a problem with me. Why would he take the life of such an innocent child who could barely take care of herself? I would wish the court to take his life. Let him suffer death even if it is today. I would be prepared to provide the rope to hang him. God created everyone for a reason. I am ready to do it personally if execution is the issue. I have suffered emotionally anytime I think of the same. I even contemplate suicide. I don’t like coming to court and seeing the accused. Thanks that’s all.”

11. The court having taken the Victim’s impact statement called for a Presentence inquiry report which was prepared by Kiriga Kimani Principal Probation officer and filed in court on 18th of June 2025.

12. In the report the probation officer under the heading **“Circumstances of the Offence”** stated:

He admits the offence. He stated that on the material day he took the victim to the forest, defiled and killed her. He later left her in the forest and returned to the house. After frantic efforts from concerned parties to know the whereabouts of the deceased, the authorities arrested and charged him with abduction. It was while in custody that he confessed

to committing this offence and took the authorities where he had left the body of his step daughter in the forest. This prompted the charges to be changed to murder from abduction.

He stated that he was led to these actions as a result of constant disagreements with his wife. He felt that she was adulterous and he felt insecure. He thus wanted to teach the wife a lesson and therefore resulted in committing this offence. This is the third time that the accused person is signing a plea agreement in this matter.”

13. Further, the probation officer in his conclusion stated:-

“The offender is 37 years old convicted for the offence of manslaughter committed on 18th and 26th days of August 2017. He was married and with three children. The victim was his first born. She was his step daughter. He was residing in Riruta prior to his arrest. His occupation was a mason specializing in tiles. He pleaded for the court leniency given that he admits commission of the offence. He signed a plea agreement. This is the third plea agreement that the accused person has signed. He stated that he is remorseful and empathizes with the victim's family especially the mother to the victim. However, inference proved otherwise during the interview. His family is non-committal in his predicament as they have pulled away from this case and its entire proceedings. They however pleaded for the court's leniency while sentencing their kin.

The local administrator leaves the decision to the court's discretion. There is public outcry from the members of the community. A newspaper item dated September 18th 2017 on the same was place on nation newspaper detailing the community's concerns.

The victim's mother is still hurting from the brutal murder of her loved one. She has undergone very difficult period coping with the loss. She

urged the court to provide the maximum sentence as provided by the law and are opposed to a non-custodial sentence.

The family members and the accused person have shown no sign of initiating reconciliation.

From the social inquiry findings, the offender has no known past criminal record and has no positive family social support. The assessment has indicated that he has no criminogenic risk factors in the area of criminal history, family relationships, education and occupation. His main identified criminogenic risk factors are in the area of anger and aggression against others to get what he wants, callous behavior, impulsive and reckless with disregard to the victim and others. He willingly took the life of an innocent child with no clear reason to undertaking up the offence.”

14. The offence of manslaughter attracts a maximum sentence of life imprisonment. Life imprisonment remains undefined in the country and the same has been declared to be a lawful and constitutional sentence by the Supreme Court of Kenya as long as the statutes provide for it-**See Petition Number E018 of 2023 Republic Vs Joshua Gichuki Mwangi** thus the sentence may be imposed by a court depending on the circumstances of a particular case.
15. At the core of sentencing is the proportionality doctrine which requires a court to impose a sentence that is proportionate to the gravity of the offence. The circumstances of the commission of an offence often dictate the nature of sentence that a court may impose.
16. The court will, in determining whether to commit an accused person to prison for his entire life or a lesser period, take into account the facts surrounding the commission of the offence as well as the impact it has had on the victim. The more aggravated the circumstances of the offense, the more severe the penalty the penalty would be.

17. The court is however expected to apply the sentencing policy guidelines set out by the Judiciary in determining the sentence to impose in a particular case.
18. The sentencing objectives in Kenya have been captured in the Sentencing Guidelines 2023 to be the following: -
- a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - e. Community protection: to protect the community by incapacitating the offender.
 - f. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - h. Reintegration:
19. The facts of this case call for a sentence that achieves the objects of retribution, deterrence, rehabilitation, and advances community protection. The sentence should also be reflective of denunciation of the conduct of the accused. The proportionality test must be manifest in the sentence that this court pronounces due to the uniqueness of this case. The court however will give the accused person some credit for having accepted responsibility by offering to plead guilty.
20. In the case of **Rotich v Republic (Criminal Appeal 15 of 2020)**

[2025] KECA 1256 (KLR) (11 July 2025) (Judgment) the court of appeal had this to say regarding sentencing for manslaughter where an accused person has pleaded guilty;-

“We also observe that there are several decisions from the High Court and this Court showing that murder generally attracts a sentence of 30 years’ imprisonment. Unless the circumstances of the commission of the offence of manslaughter are aggravated, it would be unjust to impose a term of 30 years’ imprisonment for the offence thereby failing to distinguish the punishment for the charge of manslaughter from that of murder. Indeed, as per section 137A of the Criminal Procedure Code, a plea agreement is entered into with a view to having the reduction of a charge to a lesser offence or withdrawal of the charge or a stay of other charges or the promise not to proceed with other possible charges. At times, the trial court is of the view that the more serious charge should be retained. The answer to such a concern is not to impose a sentence commensurate to the more serious offence but to reject the plea agreement. After all, the court has discretion of rejecting a plea agreement and giving reasons - see sections 137H and 137J of the Criminal Procedure Code. We therefore conclude that in passing the impugned sentence, the learned Judge failed to take into account the fact that the appellant had pleaded guilty pursuant to a plea-bargaining agreement. As such we accept the appellant’s invitation to interfere with the sentence.

21. This case presents a grim picture of a macabre killing of a minor by a person the minor had all along identified as a father figure. It was the highest form of betrayal by the accused person against the victim and the mother of the deceased.
22. The case reminds us painfully of the many challenges that our society has to confront in ensuring that the girl child is protected from sex predators who may come wearing the veil of loving and caring individuals who offer

themselves to enter into marital unions with single mothers only to turn around and sexually abuse their step daughters.

23. The accused person came into the life of the victim's mother when she already had the deceased meaning therefore, he had assumed parental responsibility over the deceased and the issues of their union with the deceased's mother.
24. The poor innocent girl must have happily accompanied the accused to the forest oblivious of the danger that lay ahead.
25. The defilement of the deceased and the subsequent killing must have been very traumatic considering her tender age. The accused person having quenched his wicked sexual desire through the obnoxious act of defilement should at the very minimum have let the deceased live. His action of killing her and abandoning the body in the forest was most savage, barbaric, inhuman and insensitive act of a sane man who always carried himself as the deceased's father.
26. This court has taken into account the sentiments of the mother of the deceased as well as the presentencing report. The pain of the mother was palpable when she rose to give her statement to this court. The court accepted the plea of guilty to manslaughter considering that the case was wholly depended on the confession of the accused that led to the discovery of the remains of the deceased and his willingness to accept responsibility for the offense.
27. The acceptance to plead guilty has saved this court valuable time and has also brought the matter to an expeditious closure to save the mother of the deceased further agony of having to wait for a longer period to get justice. As was held by the Court of appeal in **Wakianda vs. Republic [2016] KECA 181 (KLR)**:
"...the entry of a plea of guilty presents a rare absolute capitulation; a throwing in of the towel and a giving of a walkover to the prosecution and

often at great cost. A conviction comes with its consequences of varying gravity...” An accused person who chooses this path should gain from taking this option.

28. The accused person in this matter will similarly be entitled to some degree of mercy from this court in sentencing although the conclusion of the plea agreement took unreasonably long with at least two false starts. The acceptance of the plea of guilty has also saved the deceased’s mother the agony of attending court time and again which she said traumatizes her whenever she sees the accused in court. The court shall definitely take all those mitigating factors into account.
29. The court will also consider the character and record of the offender, remorsefulness of the offender, the possibility of reform and social re-adaptation of the offender as well as all other mitigating factors pleaded by the accused. The probation officers report recommends a custodial sentence and presents the picture of an accused who is considered a pariah by his own relatives and the community. The circumstances obtaining at the moment do not allow the release of the accused or a non custodial sentence.
30. The law allows the court to exercise discretion in sentencing a person for the offence of manslaughter. The discretion must however be exercised judiciously and the proportionality principle must be manifest in the sentence imposed. This court is not minded to sentence the accused to life imprisonment. He however deserves a custodial sentence.
31. In **Kigula v Republic (2009) UGSC 6 at p 41**, the Ugandan court of Appeal said: *“A trial does not stop at convicting a person. The process of sentencing a person is part of the trial. This is because the court will take into account the evidence, the nature of the offence and the circumstances of the case in order to arrive at an appropriate sentence. This is clearly evident where the law provides for a maximum sentence. The court will truly have exercised its function as an impartial tribunal in trying and*

sentencing a person. But, the court is denied the exercise of this function where the sentence has already been pre-ordained by the Legislature, as in capital cases. In our view, this compromises the principle of fair trial.”

32. The facts of this case militate against a non- custodial sentence and certainly the gruesome nature of the killing calls for a deterrent sentence notwithstanding the fact that the accused has pleaded guilty.
33. The accused is one man who should not be allowed back into society soon. In this court’s view, he remains a danger to the children of this country and he requires time to be fully counseled and rehabilitated within the confines of our correctional facilities.
34. This court balancing the scales of justice evenly, considers that a sentence of 25 years imprisonment commencing from the date of arrest on 26th august 2017 would be reasonable and proportionate sentence for the accused to serve. The sentence is punitive enough to communicate to society that such abhorrent conduct is unacceptable in a civilized society. The manner of execution of the crime was most despicable and horrible.
35. The accused person is thus sentenced to serve a prison term of 25 years commencing from 26th August 2017. The court has taken into account that by agreeing to plead guilty to manslaughter he has taken responsibility over the crime and no matter the length of time one is sent to prison, the innocent life of the minor cannot be brought back.
36. It is the hope of this court that by the time he completes that prison term, he will have learned useful lessons and his thirst for sexual intercourse with minors will have drastically reduced on account of age. The court notes that he is now 37 years of age and it is my hope the sentence will drastically slow him down.
37. The accused has a right of appeal against the sentence within 14 days.
38. It is so ordered.

**DATED, SIGNED and DELIVERED VIRTUALLY at NAIROBI this 13TH
day of OCTOBER 2025.**

**A. M. MUTETI
JUDGE**

In the presence of:

Court Assistant: Kiptoo

Ms Njoroge for the State

Gichuki for Accused

Accused: present

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