



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
CRIMINAL CASE NO. 3 OF 2020

THE REPUBLIC PROSECUTION
VERSUS
ALBERT NGONDI NJAGI.....ACCUSED

RULING ON SENTENCE

- [1] The accused person was convicted for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code following a Plea-bargain Agreement which commuted the initial offence of murder contrary to section 203 as read with 204 of the Penal Code to lesser charge of manslaughter. The accused had on 13/1/2020 initially been charged jointly with his sister Marylyn Waguta Njagi who he later exonerated and an amended murder charge dated 7/2/2024 was filed against him solely.
- [2] The facts of the case which the accused admitted were the set out in the Plea bargain Agreement as follows:

“8. Had the case gone to trial, the Prosecution would have presented evidence sufficient to prove the following facts beyond a reasonable doubt that:

Brief Facts of the Case

The accused {Albert Ngondi Njagi} is a son to the deceased {Jackson Njagi Njogu}. The accused hatched a plan to assassinate his father [deceased] in order to inherit his piece of land located within [Ikurungu] Village Mwea East Sub-County. He conscripted his sister {Marylyn Wag uta Njagi} by promising to have her get another piece of Land at [Nyangati] Village worth [Kshs 500,000/-.]

On **24th December 2019** **{Marylyn Waguta Njagi}** called her brother **{Albert Ngondi Njagi}** while inquiring the status of their father using a phone number **[0701-214-789]** and went on to discuss in much details on how their ill-mission was to be executed. They settled on the **25th December 2019** to be the exact day for the mission to be accomplished. On **25th December 2019**, the accused went for a drinking spree within Ikurungu trading center till about when the sister **{Marylyn}** summoned him home and true to her word, he found her with two masked men who quickly assisted them in carrying out the heinous act to their deceased father then aged **80 years**. They took oath upon themselves not to leak the incident after throwing the body in a borehole.

On **28th December 2019**, the accused called his nephew Pw-1 **{Mike Njagi Njogu}** informing him that his grandfather who the accused lived with went for Christmas at **[Kiumbuini]** but never made it back. **Pw-1 {Mike Njagi Njogu}** passed the information to his father **{Jamleck Njagi Jackson}** who took the information with a pinch of salt deciding to instead visit the home the following morning. Before embarking to the journey home, he called the mother **Pw-3 {Edith Njoki}** and informed her of the unfolding events with utter shock.

On **28th December 2019**, a young shepherd **Pw-4 {Joseph Mbugua Gachoki}** then aged **13 years** while grazing goats near a borehole, sensed a foul smell emanating from the borehole and when curiosity could not hold, he peeped through the hole and lo! He saw a white sack and quickly went home and informed the father **Pw-5 {Peter Ndamberi Muthoni}** who visited the scene to ascertain what it was and indeed took the initiative to inform the authorities.

Meanwhile, **Pw-2** and **Pw-3** travelled to the deceased home on **29th December 2019** with a sole aim of looking for their father and upon arrival home, the Accused **{Albert Ngondi Njagi}** was missing in action having wipped off his phone making it difficult to be reached. They received information later that the accused had been arrested and placed in cell within **[Ikurungu Police Post]**.

Pw-1 {Mike Njagi Njogu} states that after having received information of his missing grandfather on **26th December 2019**, he informed the father **Pw-2 {Jamleck Njogu}** who then visited the homestead on **29th December 2019** and while there, they received information that the accused had been apprehended for questioning on the missing person.

Pw-2 {Jamleck Njagi} confirms that indeed it was while at the homestead of the deceased [his father] that information of the accused having been arrested. That the accused was hard pressed to explain how and why the father's wrist watch was in his house and he never left it behind. He could not also answer why the deceased phone was in his house which was unusual. That he was profoundly shocked on how [his] father the deceased met his death.

Pw-3 {Edith Njoki} the wife of the deceased **{Jackson Njagi Njogu}** [her statement attached] gave the chronology of events.

Pw-6 {No 63288 PC Paul Jumwa Mwambere} was the investigating officer who recorded the statements and was able to establish the link between the accused and the deceased before he was charged.

Doctor Kenneth who performed the post mortem formed the opinion the cause of death was due to [Severe head injury secondary to a blunt force on the right side of the head.”

[3] The Accused’s Counsel in mitigation urged that the accused was a first offender, remorseful and that he had learnt his lesson, as follows:

“Mr. Maringa

The accused is remorseful of the act. He is 52 years old. He has 2 wives with three children and a minor who suffers from kidney failure. Accused has been in custody since his arrest. He has been in custody since 2019 when he act was committed. He has changed and wishes for leniency from the Court so that he can take care of the minor with kidney failure. The accused is a first offender and he seeks for a non-custodial sentence. He has learnt from the action that he did. He can have a chance to continue with his normal life. He has been living away from his his siblings. He knows they are still bitter. He wishes to

continue living away from them so that they can be proper healing and avoid bitterness. We pray for a non-custodial sentence.”

- [4] The accused for himself pleaded to be released from custody to go and take care of his child who had become ill while he was in custody and urged that he had not intended to commit the offence and had reformed while in custody, attaching certificates on training in spiritual and religious courses completed while in prison.
- [5] The Probation Officer’s presentence report dated 17/11/2025 points to a need for a custodial sentence for rehabilitation through prison structured programmes as follows:

“CONCLUSION

Your Lordship before you is a middle-aged man of sound mind and good physical health. He is the last born in a family of four siblings who are all grownups. The offender was living with the father (deceased victim) at Ikurungu village South Ngariama farming a three acre parcel of land belonging to the deceased. The offender is a class seven dropout with masonry skills acquired through apprenticeship, he separated from his wives who walked out of the marriage one after the other due to unending family feuds resulting from the offender. The first wife's whereabouts are unknown whereas the second wife resides within Mwea with her two children. The offender admits to alcohol and substance abuse. He does not appear remorseful but nevertheless prays for a non-custodial sentence.

His family members are bitter and in pain over his actions. Some wish to leave the matter to the discretion of the court whereas others echo the sentiments of the community and the local administration of opposing his prayer for a non-custodial sentence. They call for deterrence measures to curb the heinous behavior through imprisonment.

Social inquiry conducted revealed that the offender had been in conflict with the law before with one conviction albeit its records were not accessed. The risk assessment done indicated that the offender has a high risk of re-offending based on history of criminality, antisocial

personality patter, pro-criminal attitude, antisocial associates, alcohol abuse, poor family relations, poor education background and poor use of his recreational time. These risk factors can be addressed over time when properly targeted through rehabilitation.

RECOMMENDATION

Your Lordship, based on our findings, the offender is deemed unsuitable for a non-custodial sentence and it is recommended that the matter be dealt with according to the stated provisions of the Penal Code.

Pauline Lechipan

Probation Officer; Kirinyaga

17/11/2025”

- [6] Supporting the Probation Officer’s position, Counsel for the DPP urged that the deceased was the accused’s father and that the accused knew what he was doing and that from the circumstances of the case, there was need for the rehabilitation of the accused through prison discipline.
- [7] The accused killed his father in order to inherit his property in the circumstances set out in the facts which he admitted leading to his conviction for the lesser charge of manslaughter on plea bargain. The accused’s child allegedly suffering kidney failure is better off with the health professionals in medical care, doctor and nurses, rather than the accused who would eliminate his kin for personal gain. Indeed, the accused is fortunate that the DPP agreed to the Plea bargain as the facts set out in the plea agreement, if they had been proved (and it may be that the DPP relied on circumstantial evidence and did not want to risk an acquittal) constituted murder by joint offenders.
- [8] The Court considers that a custodial sentence of imprisonment is appropriate in this case to afford the accused necessary reformation and rehabilitation. The accused having been in custody for six (6) years since 29/12/2019 when he was arrested to await his trial, the Court considers a sentence of imprisonment for ten (10) years to suitably respond to the offender’s criminogenic needs for rehabilitation.

ORDERS

[9] Accordingly, for the reasons set out above, the Court, having convicted the accused for the offence of Manslaughter contrary to section 202 as read with 205 of the Penal Code, now passes on the accused **a sentence of imprisonment for ten (10) years to commence on 29/12/2019**, when the accused was arrested to await his charge and trial before the Court, in accordance with section 333 (2) of the Criminal Procedure Code.

Order accordingly.

DATED AND DELIVERED THIS 20TH DAY OF FEBRUARY 2026.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Mamba for the DPP.

Mr. Maringa for the Accused.