

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL CASE NO. E010 OF 2024

REPUBLIC.....PROSECUTION
VERSUS
PHILIP AYISI MASHETI.....ACCUSED

RULING ON PLEA AGREEMENT

1. Before this Court is a Plea Agreement entered into between the Prosecution and the Accused person, Philip Ayisi Masheti, pursuant to the provisions of Sections 137A-1370 of the Criminal Procedure Code. The accused was initially charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. Following negotiations between the Prosecution and the Defence, the parties entered into a plea agreement under which the accused agreed to plead guilty to the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The plea agreement was presented before this Court for consideration and adoption.

Analysis and determination

3. Plea bargaining in Kenya is governed by Sections 137A-1370 of the Criminal Procedure Code. Section 137A provides that the prosecution and an accused person may enter into an agreement whereby the accused agrees to plead guilty to an offence in exchange for certain concessions by the prosecution.

4. Section 137F requires the court to satisfy itself that the plea agreement was entered into voluntarily and without coercion, threats, force, intimidation or undue influence. Further, Section 137H requires the court to ensure that:
 - a. The accused understands the nature of the charge.
 - b. The accused understands the consequences of the plea agreement.
 - c. The accused understands the rights being waived, including the right to trial.
5. These provisions give the court an important supervisory role to ensure that the plea agreement is lawful, voluntary and in the interests of justice. The court retains the discretion either to accept or reject a plea agreement. the duty of the trial court is to carefully scrutinize plea agreements before adopting them.
6. In ***Republic v Ahmad Abolfathi Mohammed & Another, the court held that before accepting a plea agreement the court must be satisfied that the accused person entered into the agreement voluntarily and understands the consequences of the plea.***
7. Similarly, ***in Republic v Mohamed Abdow Mohamed, the court stated that plea bargaining promotes efficient administration of justice but must not compromise the accused person's constitutional rights.***

8. The Supreme Court **in Francis Karioko Muruatetu & Another v Republic** ***also emphasized that sentencing remains a judicial function and must ultimately be determined by the court after considering the circumstances of the offence and the offender.***

Consideration by the Court

9. This Court has carefully examined the plea agreement presented by the parties and the Court notes that:

- I. The accused person has expressly stated that he is entering the plea agreement freely and voluntarily.
- II. The accused acknowledges that he understands the nature of the offence and the elements of the charge of manslaughter.
- III. The accused confirms that he understands his constitutional rights, including the right to a full trial, the right to call witnesses, and the right to cross-examine witnesses.
- IV. The accused has voluntarily waived these rights and agreed to plead guilty.

10. The Court has also considered the factual basis of the offence as set out in the plea agreement. The facts disclose that on 29th February 2024, the accused left home together with the deceased child, aged four years.

11. The child later went missing and investigations revealed that the accused person had killed the child and dumped her body in a pit latrine. The accused subsequently led police officers to the location

where the body of the deceased child was recovered. A post-mortem examination established that the cause of death was manual strangulation.

12. The Court is satisfied that the facts disclosed in the plea agreement support the offence of manslaughter.

Voluntariness of the Plea Agreement

13. The Court has personally addressed the accused person in open court and confirmed that:

- i. He understands the terms of the plea agreement.
- ii. He understands the charge of manslaughter and the possible sentence provided under the law.
- iii. He entered the plea agreement voluntarily and without coercion.

14. The Court is therefore satisfied that the requirements under Sections 137A-137H of the Criminal Procedure Code have been complied with.

15. Under section 205 of the Penal Code, the offence of manslaughter attracts a maximum sentence of life imprisonment.

16. The plea agreement indicates that the Prosecution will recommend a custodial sentence, while the Defence proposes a sentence of three years imprisonment. However, the Court reiterates that sentencing is within the sole discretion of the court and the court is not bound by the recommendations of the parties.

Determination

17. Having carefully considered the plea agreement, the applicable law and the circumstances of the case, the Court is satisfied that the plea agreement:

- i. complies with the provisions of the Criminal Procedure Code,
- ii. was entered into voluntarily, and
- iii. is supported by a sufficient factual basis.

Accordingly, the Court accepts and adopts the plea agreement.

Orders

1.The plea agreement entered into between the Prosecution and the Accused person is hereby adopted by this Court.

2.The charge of murder contrary to section 203 as read with section 204 of the Penal Code is substituted with the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code.

3.The accused person is hereby convicted on his own plea of guilty to the offence of manslaughter.

4.The matter shall proceed to mitigation on 5.5.2026.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 17TH DAY OF MARCH, 2026.

S.N.MBUNGI

JUDGE

In the Presence of:-

CA: Zilda/Velma

Ms. Wanyonyi for the accused present.

Ms. Kiu for ODPP present.