



**Director of Public Prosecution v Joseph (Criminal Case E023 of 2023)
[2024] KEHC 1736 (KLR) (22 February 2024) (Sentence)**

Neutral citation: [2024] KEHC 1736 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E023 OF 2023
SC CHIRCHIR, J
FEBRUARY 22, 2024**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION REPUBLIC

AND

TIMOTHY PATRICK JOSEPH ACCUSED

SENTENCE

1. The Accused herein was charged with murder contrary to section 203 as read with section 204 of the *Penal Code*.
2. Later on, pursuant to a plea bargain with the state, he pleaded to a lesser charge of manslaughter. He was convicted on his own plea.

Accused's Submissions.

3. Through his advocate Mr. Magina, the accused submitted that his aim was to discipline an otherwise naughty child and not to kill. That he did not realize he was using excessive force as he was intoxicated at the time. He is remorseful, and a first-time offender. He further states, he has 2 wives and 9 children, to take care of. He submits that he has had time to do some introspection while in custody, and he has reformed. He seeks for leniency and asks the court to consider a reformatory approach in meting out the sentence.

Prosecutors Submissions

4. Ms. Moraa for the state submitted that the accused had the parental duty to safeguard the life of the deceased but failed. She argues that accused deserves a stiff penalty for cutting off the life of minor. That in any event, he was found to be mentally fit, consequently he ought to have been careful not to use excessive force.



Presentencing Report

5. At the request of the court, the probation office carried out an assessment report for consideration before sentencing. The report indicates that the accused has a history of violence, substance and alcohol abuse. He is described as particularly violent and uncontrollable, when under the influence of the aforesaid substances.
6. The inquiry report also indicate that the Accused had separated with the deceased's mother and the deceased's Aunt had taken over the guardianship of the deceased due to the violence exhibited by the accused and mistreatment by his step- mother.
7. I have considered the rival submissions and the presentencing report. The accused herein killed his 9-year-old son. On mitigation submits that his intention was to discipline , not to kill the child. He says he is he is remorseful, and a first offender.
8. The above are mitigating factors . However, I have considered the findings of the probation officer and looked at some of the witnesses accounts. While the accused told the court that this was a case of a parent disciplining his child that went completely wrong, there are indications that, this was not an isolated incident. There are indications from the inquiry report that deceased had been a victim a of parental abuse and violence in the past.
9. The deceased was a 9-year-old child at the time of the incident. The accused owed him care and protection. As pointed out by the prosecution instead of providing those he abused his authority as a parent and betrayed the trust of his child.
10. I have further taken into consideration the fact this was a case of domestic violence and the victim was a vulnerable one.
11. I have further taken into account the circumstance of the crime. According to the facts set out in paragraph 0 – 12 of the plea-bargaining agreement, there were people around during the assault. These people tried to stop the assault to no avail. He retorted that he was giving to “kill and bury the child on that day.”
12. The beating began at the Grandmother's (Accsed's mother) house. He then took the child to his his kitchen and continued beating him to death. He later cleaned the body and changed clothes. If the killing was accidental as he claimed, the Accused ought to have made an effort to get child to hospital, if only to ascertain if the child still alive by any chance.
13. The aggravating factors in this case far outweigh the mitigating ones.
14. Taking into consideration all the foregoing , I hereby sentence the accused to 15 years in prison. The sentence will run from 14.6.2023 being the date when the accused was first arraigned in court.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 22ND DAY OF FEBRUARY, 2024

S. CHIRCHIR

JUDGE

In the presence of:

