



**Republic v Barasa (Criminal Case E043 of 2023)  
[2024] KEHC 4581 (KLR) (26 April 2024) (Sentence)**

Neutral citation: [2024] KEHC 4581 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL CASE E043 OF 2023**

**DK KEMEL, J  
APRIL 26, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ANTHONY NYONGESA BARASA ..... ACCUSED**

**SENTENCE**

1. Anthony Nyongesa Barasa had initially been charged with an offence of murder contrary to section 203 as read with section 204 of the *Penal Code* with the particulars being that on the 14<sup>th</sup> day of October, 2023 at Nabingenge Technical Village in Milima Location, Bungoma North Sub- County within Bungoma County, he murdered of Zipporah Namarome.
2. The charge against the accused herein was later reduced to one of manslaughter following a plea bargain agreement dated 26.2.2024. The court duly accepted the said plea agreement pursuant to the provisions of section 137H of the *Criminal Procedure Code* and that it satisfied itself on the factual basis of the plea agreement and that the accused was competent, of sound mind and had acted voluntarily in accordance with section 137G of the *Criminal Procedure Code*.
3. The new charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code* was subsequently preferred against the accused herein. The particulars are that on the 14<sup>th</sup> day of October, 2024 at Nabingenge Technical in Milimani Location, Bungoma North Sub- County within Bungoma County he unlawfully caused the death of Zipporah Namarome
4. The facts in support of the charge as disclosed in the plea agreement dated 26.2.224 are that on the 14.10.2024 at Nabingenge Technical Village in Milimani Location in Bungoma County, the accused herein caused the death of Zipporah Namarome then aged 36 years old. On the material date at around 2.50 AM Annah Barasa Namalwa who is the mother of the accused was at her house which is close to that of the accused and the deceased, heard noises and screams from the house of the accused. She



approached the scene and found the accused assaulting the deceased using a wooden stick while the deceased was fighting back. That the two had been drunk. She tried to intervene and that they stopped their fight. She returned to her house and after a short while she heard screams but decided not to go there. The following day she found the deceased had died and raised alarm. The body was later picked up and taken to the mortuary. The police later collected several items from the scene for forensic analysis which were produced herein as exhibits and which comprised of one slasher, one panga, one pair of gumboots, one bloodstained curtain, one bloodstained blue pair of jeans, a bloodstained pink dress, one hammer. The body of the deceased was later examined by Dr Kere who formed the opinion that the cause of death was cardiopulmonary arrest secondary to critical head injury of the left temporal subdural hematoma as a result of blunt injuries due to assault. The post mortem report dated 11.10.2023 was produced as exhibit 8. The accused was later subjected to a mental assessment and was found fit to stand trial. He was charged with murder which was substituted with the offence of manslaughter.

5. The accused admitted the charge and further knowingly, voluntarily and truthfully admitted the facts read out herein. He was duly convicted on his own unequivocal plea of guilty.
6. During the sentence hearing, Miss Lunani for the accused submitted that the offence took place when both the accused and deceased, who were a couple, were drunk and under the influence of alcohol. She submitted that there were issues of infidelity on the part of the deceased after she arrived home late at night. That the fights had been a usual occurrence between the two but this time turned tragic. It was submitted that the accused is a first offender who prays for leniency.
7. Miss Kibet for the prosecution submitted that the court should consider the fact that a life was lost. She added that this was a case of gender based violence and that even if the deceased was alcoholic she did not deserve to die as other modes of dispute resolution should have been resorted to instead of killing.
8. The court called for a pre-sentence report. The same is dated 27.3.2024. The same indicates that the accused and the deceased led a chaotic lifestyle as they were engaged in physical fights on several occasions. It further indicates the neighbours described the accused as violent, dreadful and a confrontational person who was feared in his community and who showed total disregard of the law. The report gathered that the accused had been wary of the deceased who had left her former marriage and agreed to cohabit with him but was still seeing her former husband. This seems to have been the main source of conflict throughout their period of cohabitation. The community attitude to the accused is one of hostility as they torched his house after the incident and that he does not enjoy community acceptance.
9. I have given due consideration to the submissions of learned counsels as well as the sentiments of the County Probation Officer Bungoma. Under Section 205 of the *Penal Code*, manslaughter is punishable by a maximum sentence of life in prison. However, this represents the maximum sentence which is usually reserved for the worst of such cases. This does not appear to fall in the category of the most heinous examples of manslaughter as regards the circumstances of the accused herein. The circumstances of the offence appear rather tragic. The pre-sentence report has aptly captured the conduct of the accused as a violent and belligerent individual who is feared in his village and that he does not enjoy community acceptance. The deceased is reported to have come into accused's life after separating with her husband and that she came in with her three children but however the union could not last due to accusations of infidelity levelled against the deceased which led to the frequent fights between them. The circumstances therefore lead me to find that this is not suitable for the maximum punishment I am inclined to rule out life imprisonment for the accused.



10. Case law could be the starting point in determining a custodial sentence for manslaughter since the Judiciary Sentencing Guidelines are silent on the path to take in manslaughter instances. Currently, the said guidelines are being reworked with a view to having them anchored in law. In the case of *VMK v R* (E2015) eKLR ten years imprisonment was given for manslaughter. When a dangerous weapon is used in the commission of the crime, courts are more likely to sentence the offender to life in prison. However, the circumstances of each case must be taken into consideration. For instance, in the case of *Republic v Daniel Okello Rapuch* (2017) eKLR, a sentence of twelve months imprisonment was meted out on a man who killed another on allegation of being involved in an illicit love affair with his girlfriend. The facts in the present case are that the accused attacked the deceased when she turned up around two o'clock in the morning and that he accused her of sneaking out in the night to go and have illicit sexual intercourse with her former husband and other liaisons. Even though this could have angered the accused, then he should have resorted to other modes of dispute resolution such as engaging the village elder or his in-laws or take legal action such as separation or divorce. Instead, he butchered her. The action by the accused were unwarranted. Had he controlled his anger, the deceased could probably be alive today. The circumstances revealed the accused as a person who is a danger to the society due to his belligerent and violent conduct. Such kind of conduct must be discouraged and hence the need for a custodial sentence. In any event, the social inquiry report has ruled out a non-custodial sentence since he does not enjoy community acceptance as he is a feared character in the area.
11. The accused has sought for leniency regarding the incident. The Court of Appeal in *Charo Ngumbao Gugudu v Republic* (2011) eKLR held as follows: -

“Further the law is that sentence imposed on an accused persons must be commensurate in the moral blame worthiness of the offender and that it is thus not proper exercise for the court to fall to look at the facts and circumstances of the case in their entirety before setting for any given sentence – See *Ambani v Republic* (1990) eKLR.”.
12. From the postmortem report produced as exhibit 8, the injuries inflicted on the deceased comprised of multiple bruises on both forearms, depressed skull fracture, lacerations on posterior neck, anterior neck strangulation, subdural hematoma on frontal skull. The opinion of the pathologist is that the cause of death was cardio pulmonary arrest due to critical head injury of the left temporal hematoma as a result of blunt injuries due to physical assault. The injuries inflicted on the deceased were quite severe as it showed that the assailant was really out to finish off the deceased. Had the accused controlled his anger and then resorted to other channels of redress then the incident could have been avoided. The accused appeared to have been out to finish off the deceased whom he accused of being unfaithful in the marriage. However, the accused did not find the deceased in the act of sexual intercourse (flagrant delicto) with her estranged husband or other person(s). The accused thus took the law into his hands.
13. The accused has been in custody since the time of his arrest to date. Learned counsel for the prosecution has urged the court for a custodial rehabilitation for the accused. Indeed, the circumstance of the offence together with the accused's family background warrants a custodial rehabilitation for the accused herein. He will surely benefit from the same despite the fact that he is still a young man with a full life ahead of him. The custodial rehabilitation will help to mould him into a better person before being released back to the society. The accused in agreeing to plead to the charges has helped in saving the court's judicial time which will be taken into consideration.
14. In view of the foregoing observations, i order the accused herein Anthony Nyongesa Barasa to serve imprisonment for a period of fifteen (15) years which shall commence from the date of his arrest namely 14.10.2023.



**DATED AND DELIVERED AT BUNGOMA THIS 26<sup>th</sup> DAY OF April 2024.**

**D Kemei**

**Judge**

**In the Presence of:-**

**Anthony Nyongesa Barasa Accused**

**Miss Lunani for Accused**

**Minishi for Prosecution**

**Kizito Court Assistant**

