



**Republic v Manyala (Criminal Case E004 of 2024)
[2024] KEHC 4232 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4232 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E004 OF 2024**

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

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPH OLILA MANYALA ACCUSED

RULING

1. Joseph Olila Manyala 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 8TH day of December, 2023 at Mewa village in Bungoma South Sub- County within Bungoma County, he murdered John Omolo Kisara.
2. The charge against the accused herein was later reduced to one of manslaughter following a plea bargain agreement dated 28.11.2022. 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 8th day of December, 2024 at Mewa Village in Bungoma South- County within Bungoma County, he unlawfully caused the death of John Omolo Kisara.
4. The facts in support of the charge as disclosed in the plea agreement dated 26.2.2024 are that on the 8.12.2024 one Jessica Wanjala had gone to her farm to plant vegetables when a foul smell hit her nostrils. She approached the source of the smell and saw a shallow pit and some polytene paper bag and due to the strong stench, she alerted the clan elder who came with members of public. It was discovered that the stench emanated from a body of a human being that was in a state of decomposition. The



accused herein later confided in one of the villagers that he had been a close friend of the deceased and shared household items and that later he found his items missing and that he suspected the deceased to be responsible. Apparently, at the time the accused had chased away his wife for having an affair with the deceased. The accused admitted to have killed the deceased and buried his body in a shallow pit. Upon the confession, the accused requested to be escorted to the police station for his own safety. A confession was later recorded from him before the charge of murder was preferred and which was reduced to manslaughter following a plea bargain agreement. An autopsy was later conducted on the body of the deceased and that the pathologist formed the opinion that the cause of death was severe head injury from a deep cut on the head from assault. The autopsy report dated 25.12.2023 was produced as an exhibit.

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, Mr. Okaka for the accused submitted that the accused is remorseful for the offence and that he is a first offender. It was also submitted that the accused is the breadwinner for his family of six children. It was also submitted that the offence was committed as a result of provocation and hence it was in self defence. Learned counsel sought for a no-custodial sentence as the accused is not a danger to the society.
7. Miss Kibet for the prosecution submitted that the court should consider the fact that a life was lost in the circumstances. She submitted that the social enquiry report indicates that the accused's family is unknown and that the accused lacks remorse. It was submitted that the claim of provocation is not a defence as the accused ought to have used other channels of redress. Finally, learned counsel sought for a custodial sentence as the accused is a dangerous person who cannot be released to the society.
8. The court called for a pre-sentence report. The same is dated 2.4.2024. The report points out the fact that the accused has not been candid with the probation officers as he has declined to give out his family details and their whereabouts and further his immediate family could not be traced for any interaction or interview. The report from the area where he lived is that nobody knows his home or his family and that he has no fixed place of abode. The report indicates that the accused lacks a family support system that could help in a rehabilitation journey and thus not suitable for a non-custodial sentence.
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 accused has admitted killing the deceased after a disagreement over missing household items belonging to the accused. The accused through his learned counsel has maintained that he had been provoked. However, the act of the accused in shoving the deceased's remains in a polythene bag and dumping it in a shallow pit revealed that he was a cruel person. The court takes into consideration the fact that the accused has saved judicial time vide the plea agreement herein. I am therefore 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) ECLR* 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 confronted the deceased over missing household items and later hit him with a piece of wood killing him instantly and then dumped his remains in a shallow pit. The circumstances revealed the accused as a person who is a danger to the society due to his conduct in killing the deceased and dumping his remains in a shallow pit without a care in the world. Neighbours of the accused have voiced their concerns that the accused was not social and hence nobody knows his family and their whereabouts. I find custodial rehabilitation to be suitable in the circumstances.

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 an exhibit, the injuries inflicted on the deceased comprised of a clean cut on the frontal and parietal bones. The opinion of the pathologist is that the cause of death was severe head injury from deep cut on the head from assault. Had the accused opted to use other channels of redress, the deceased could be alive today. The accused seemed to have decided to get rid of the deceased upon establishing that the deceased had stolen his household goods. It also transpired that there were allegations that the deceased had had an affair with the wife of the accused. 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.

14. In view of the foregoing observations, i order the accused herein Joseph Olila Manyala to serve imprisonment for a period of fifteen (15) years’ imprisonment which shall commence from the date of his arrest namely 8.12.2023.

DATED AND DELIVERED AT BUNGOMA THIS 26th DAY OF APRIL 2024.

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D KEMEI

JUDGE

In the Presence of:-

Joseph O Manyala Accused

Okaka for Accused

Minishi for Prosecution

Kizito Court Assistants



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