



REPUBLIC OF KENYA



**Republic v Kiburi (Criminal Case E021 of 2021)
[2024] KEHC 9959 (KLR) (31 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 9959 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E021 OF 2021
PN GICHOHI, J
JULY 31, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMUEL THUO KIBURI ACCUSED

SENTENCE

1. After accused pleaded Not Guilty on 08/06/2021 for the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#), the matter never took off for hearing. On 28/07/2023 and through his Counsel, the accused person wrote to the Director of Public Prosecution (DPP) proposing a possibility of entering into a plea bargain
2. That was finally agreeable to both parties and they signed it reducing the charge to Manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#). The particulars of the offence were that on the 16th day of April 2021 at Mariakani area workers sub- location in Nakuru North sub- county within Nakuru County, he unlawfully caused the death of Simon Mutemi Kimanzi.
3. Upon the charge being read to him in Kiswahili language which he said he understood well, the accused replied:- "*Ni Ukweli*" (It is true). The facts were that on 16th day of April 2021 ,the accused person was taking alcohol at Mariakani estate in Nakuru North Sub- County before proceeding to the house of his former wife Martha Wangui Mwangi with whom they had three children. They had separated due to marital problems and this visit was pursuant to conditions set by the area chief in regard to such visits.
4. The accused person did not find her. He started chasing the children from the house causing disturbance. He then left promising to come back with petrol to set the house on fire.
5. The accused returned at 6.00 pm on the same day. He was drunk. He found Martha Wangui in the house and being briefed by her children and neighbours as to what had transpired while she was away. The accused person started hurling insults to her and the children and threatening to kill them.



6. A tenant by the name Francis Gichana witnessed this incident and called for assistance from Baba John who was also a tenant so that they could kick the accused out of the plot.
7. The accused person however picked a knife and hid it in his clothes as his son watched. He then left the plot as he hurled insults at Martha Wangui who took refuge at Gladys's Wambua's house.
8. It is then that Simon Mutemi Kimanzi (deceased) decided to approach the accused and clam him down. As witnessed by Fredrick Chikoti, the deceased just fell on the ground. Fredrick realised that the deceased had been stabbed by the accused.
9. The deceased's wife came out of the house when she heard the noises outside. She found the deceased lying down in a pool of blood. The accused person was assisted by a boda boda rider to take the deceased to Impact Health Centre for treatment.
10. Soon after, Fredrick Omunynga who was a member of Community Policing arrived at the scene. He enquired as to what had transpired and called the OCS Kiuguini Police Station. He then proceeded to the Health Centre but he did not find the accused. He found that deceased had died.
11. It was on 17th April 2021 that the accused person presented himself at Kaguto Police Station and made the report. He was dressed in blue blood-stained trouser jeans. The police were aware that the accused was a suspect and therefore arrested him. They took his trouser for DNA analysis. On the same day that is, 17th April 2021, a member of the public recovered the murder weapon from a Sukuma Wiki vegetable garden at Mariakani estate and handed it over to the police.
12. The accused person was subjected to a mental assessment. On 29th April 2021, Post-mortem was done on the deceased by Dr. Biketi of Nakuru PGH Mortuary and it revealed that the cause of death was penetrating chest trauma from sharp injury inflicted on the left chest.
13. The accused person admitted these facts and was convicted on his own plea of guilty.
14. In his address to the Court, Mr. Kihara for the Prosecution told the court that though it was alleged by the eye witness that the accused was drunk at the time, there was no medical record to confirm it. Further, he stated that the accused person may be treated as a first offender but urged the court to consider the accused's aggressive behaviour and the prevalence of such incidents. He urged that a custodial sentence be passed on the accused person.
15. In mitigation Miss Mwangi for the accused person stated that the deceased was stabbed during a struggle and therefore, the accused lacked mens rea to kill the deceased. That it was a single stab. She urged the court to consider that even though he was drunk, the accused person still tried to take the deceased to hospital.
16. She urged the court to consider that the accused person is a father of three children aged 19, 15 and 10 years and that as a father, he was the breadwinner of the family. She proposed a non- custodial sentence of a period of three years considering that the accused is now aged 55 years and has been in custody since 2021.
17. The pre-sentence report called for by this court was prepared on 14th May 2024 by Mr. Samuel Ndungu, a Probation Officer and filed on the same day. His recommendation is that the accused person is suitable for a non- Custodial sentence being a Probation Order for a period of three (30 years).
18. He has indicated that the accused person has no criminal history according to his family but lives a solitary life from his family with no close connectivity with them , hence none visits him in prison.



19. The report also indicates that from the community perspective, including that of the area chief, the accused's major problem is over indulgence in alcohol. That she had set conditions that he be providing for the family and that he was reluctantly doing it. The chief sees no problem with a non-custodial sentence considering that there was no bad blood between him and the deceased.
20. In regard to the attitude by the victim's family, the report indicates that the deceased was aged 36 years at the time of death. He was married with two school going children aged 13 and 10 years and was also supporting his elderly parents. That the deceased's family laments that the accused's family has never gone to seek forgiveness or foster reconciliation. They therefore leave the matter to court.

Determination

21. In determining the appropriate sentence in this case, the Court has to have in mind the objective of that sentence. Those objectives are set out in [Judiciary Sentencing Policy Guidelines](#) that is :-
 1. To punish the offender for his/her criminal conduct in a just manner.
 2. To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 3. To enable the offender reform from his criminal disposition and become a law-abiding person.
 4. To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims, communities' and offenders' needs and justice demand that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
 5. To protect the community by incapacitating the offender.
 6. To communicate the community's condemnation of the criminal conduct.
22. From the material before this Court, it is now clear that the accused person has a problem of alcohol abuse that led to his separation with his wife and children. The area Chief had to intervene and give him conditions towards supporting the family.
23. It is disclosed that he reluctantly did it. Though it is indicated that he visited the family on this date pursuant to the conditions set by the Chief, there is nothing to show that he went there in peace. There is also nothing to show that he went there to provide for the family.
24. On the contrary, he displayed extreme violence before his own children, chasing them out of the house and threatening to come back with petrol and set the house on fire. Such kind of behaviour has negative impact on the lives of said minors who should in normal circumstances look up to the accused as their father, provider, protector and friend.
25. The accused person escalated his violence when he came back as promised and hurled insults at his wife and children, threatening to kill them. The tenants had to intervene. His wife had to seek refuge in another tenant's house.
26. By picking a knife and hiding it in his clothes in the circumstances herein was an indicator that he intended to use it to harm or kill someone as he had threatened. It is unfortunate that he turned it on the deceased who was indeed a peace maker at the time. His attempt to take the deceased for treatment was too late and though it may be taken as a sign of reflection, he robbed a young family of their own breadwinner. The mitigation that the accused is the breadwinner of his own family contradicts the his conduct and the facts herein.



27. Though a first offender with no criminal history, his violence on this date and the fact that he is a loner with no relations with his family, would call for proper rehabilitation from alcoholism and on anger management with a view to making him a law-abiding person. That can only be effectively done while he is in custody. It is for those reason that this Court differs with the recommendation by the Probation Officer. This Court is satisfied a period of nine (9) years imprisonment is appropriate in the circumstances.
28. From the record, the accused person was arrested on 17th April 2021. It is apparent that was granted bond on 08/06/2021 and a release order issued on 18/06/2021. It is also apparent that the surety was discharged on 15/02/2023 and the accused person has been in custody since then. Under Section 333 (2) of the Criminal Procedure Code , the period the accused person has spent in custody awaiting trial should be taken into account.
29. In conclusion , the Court makes the following orders:-
1. The accused person is hereby sentenced to serve nine (9) years imprisonment.
 2. The sentence to run from 17th April 2021 being the date of arrest to 18/06/2021 when he was released on bond, then 15/02/2023 when surety was discharged.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 31ST DAY OF JULY , 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:-

Mr. Kihara for the State

Samuel Thuo Kiburi - Accused person

Ms Mungai for Accused person

Ruto- Court Assistant

