



**Republic v Kiarie (Criminal Case E011 of 2021)
[2024] KEHC 10512 (KLR) (28 August 2024) (Sentence)**

Neutral citation: [2024] KEHC 10512 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E011 OF 2021**

A MSHILA, J

AUGUST 28, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

ELIZABETH MUTHONI KIARIE ACCUSED

SENTENCE

1. The accused was initially charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*; upon a Plea Bargain Agreement being entered the Charge was then reduced to manslaughter;
2. The Plea Bargain Agreement dated 29/05/2024 was adopted by the court upon it being satisfied that the accused had understood the contents and that she had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion of any kind;
3. The particulars of the offence of Manslaughter c/s to Section 202 as read with Section 205 of the Penal Code are that the accused was charged with having unlawfully killed Kelvin Kiarie Wanjiku on the 14th day of February, 2021 at Murengeti Village in Limuru Sub-County within Kiambu County;
4. On the 24/02/2021 the accused confessed to having unlawfully killed her son aged 13 years; before confessing to the crime the accused had called her mother and informed her that the child was missing; this was followed by a report made to Githunguri Police Station and broadcasts on radio and social media as well as the conducting of a physical search;
5. The body was found in a maize plantation; a Post Mortem examination revealed the likely cause of death as from being hit on the head with a blunt object; The Post Mortem Report was produced into court as 'PEXh.1';



6. The accused was convicted on her own plea of 'Guilty'; Before sentencing both counsels were invited to make submissions in mitigation; hereunder are the respective submissions.
7. Prosecuting Counsel for the State submitted that on the 24/02/2021 the accused had confessed to having committed the offence and had recorded her statement at the earliest onset; The prosecution submitted that the accused in accepting the Plea Bargain the accused had not wasted judicial time; it had no previous records of the accused and that she may be treated as a first offender;
8. In mitigation Counsel for the accused submitted that the convict mourned the loss of her son and was extremely remorseful; her state of mind was disturbed by reason of her HIV status and her son was also afflicted and she wanted to ease his suffering and hers; on the grounds of the convict's medical health condition Counsel pleaded and prayed for a pardon or a non-custodial sentence.
9. The convict had been arrested on the 24/02/2021 and remained in custody to date and had therefore spent approximately three (3) years and six (6) months in custody; in the circumstances the period spent in remand was an adequate custodial sentence;

Analysis

10. It is the duty of this court to impose a sentence that meets the facts and circumstances of the case; this court has considered the full circumstances of the offence which is contained in the Probation Officers Report; it was reported that the Convict had been previously married for a short while and upon separation with her husband he committed suicide by drinking rat poison; the report further states that when being interviewed it was observed that the convict was mentally disturbed and had suicidal thoughts; Even during the period she was remanded in prison she was placed under a 24 hour suicidal watch;
11. This court has taken into consideration the aggravating circumstances in the commission of the offence in that the convict used physical force and a blunt object to inflict the fatal injuries on her child; after the unfortunate state of affairs she left the deceased for dead and proceeded to inform her family that the child was missing and to lead the authorities in the wrong direction knowing fully well that it was untrue.
12. The mitigating factors taken into consideration by this court are that the accused readily pleaded guilty and thus saved the court on judicial time; the facts narrated by the prosecution took into consideration the personal circumstances of the convict that she had an existing medical condition in the form of HIV causing her to agonize on her condition as well as her sons as he was also afflicted; she has also expressed her remorse and found to have no previous record and is deemed to be a first offender;
13. The offence of manslaughter is punishable by a maximum sentence of life imprisonment; however, the life sentence has now been declared by the Court of Appeal in the case of *Manyeso vs Republic* [2023] KECA 182 (KLR) as being unconstitutional as it was held to be discriminatory, inhumane, and a violation of the accused's persons right to a fair trial;
14. In the light of the mitigating factors this court finds the convict is deserving of leniency and that such offenders generally require treatment and a non-custodial sentence; the convict has been remanded for a period of approximately three (3) years and six (6) months which period shall be deemed as term served.

Findings & Determinations

15. For the foregoing reasons this court makes the following findings and determinations;



- i. The period spent in remand of Three (3) years and months to be deemed as term served.
- ii. The convict be set at liberty forthwith unless otherwise lawfully held.

Orders Accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 28TH DAY OF AUGUST, 2024.

A. MSHILA

JUDGE

In the presence;

Mourice – Court Assistant

Gacharia – for State

Gathua – Absent

Elizabeth present from Lang'ata Prison

