



**Republic v Ng'ang'a (Criminal Case 2 of 2018)
[2024] KEHC 10510 (KLR) (28 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10510 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 2 OF 2018**

A MSHILA, J

AUGUST 28, 2024

BETWEEN

REPUBLIC APPELLANT

AND

MERCY MUTHONI NG'ANG'A ACCUSED

RULING

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 this charge was then reduced to manslaughter;
2. The Plea Bargain Agreement is dated 7/06/2023 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 accused was charged with having unlawfully killed Ann Wamaitha Kiarie on the 12th day of December, 2018 at Githurai 44 Area within Kiambu County; she was convicted on her own plea of 'Guilty' of the offence of Manslaughter Contrary to Section 202 as read with Section 205 of the [Penal Code](#);
4. At the hearing here-of, the accused was represented by Learned Counsel Mr. Munene whereas Mr. Gacharia was the Prosecuting Counsel for the State; both counsels were invited to make submissions in mitigation before sentencing;
5. Prosecuting Counsel for the State submitted that by accepting the Plea Bargain the accused had not wasted judicial time; the facts are that on 12/12/2017 the Accused left home and went to sell vegetables she carried a basin and a kitchen knife to cut vegetables; the accused worked till 10pm and passed through Wakaness Bar and found deceased there; Daddy a cousin to Accused's spouse was present and was selling drinks; he heard commotion and found accused holding a knife and deceased bleeding on



right thigh; He grabbed knife from accused and got a motor bike to rush the deceased to St, Johns hospital;

6. The accused was arrested and arraigned in court on 2/01/2024 and never enjoyed the benefits of bail/bond and had therefore spent six (6) years in custody; it had no previous records of the accused and that she may be treated as a first offender;
7. In mitigation Counsel for the accused submitted that the convict was extremely remorseful and regrets the loss of the life; she was apologetic to the victim's family; she pleaded for a lenient sentence and/or the period spent in remand be treated as an adequate custodial sentence;

Analysis

8. 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 that there had been a long standing strained spousal relationship arising from his alcoholism; the deceased had picked a fight with the accused the previous day when found drinking with the spouse of the accused; in the ensuing melee the accused stabbed the deceased who succumbed to the injuries on the same day whilst receiving treatment;
9. This court has taken into consideration the aggravating circumstances in the commission of the offence in that the convict use of a deadly weapon to inflict the fatal injuries; but a witness to the incident stated that it was the deceased who attacked the accused who in self defence retaliated leading to the unfortunate state of affairs;
10. 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 reveal that the killing was not premeditated she has also expressed her remorse and found to have no previous record and is deemed to be a first offender;
11. The applicable law on sentencing for the offence is found under the provisions of Section 205 of the [Penal Code](#) which reads as follows;

‘Any person who commits the felony of manslaughter is liable to imprisonment for life.’
12. The offence of manslaughter was punishable by a maximum sentence of life imprisonment; the maximum mandatory sentence was usually reserved for the worst case scenario; but the Court of Appeal in the case of [Manyeso v Republic](#) [2023] KECA827 (KLR) declared the mandatory life sentence to be unconstitutional as it was indeterminate, discriminatory, inhumane and a violation of the right to human dignity;
13. The aggravating factors in this instance far outweigh the mitigating factors; the accused went to the Wakaness Bar to provoke the deceased whilst armed with her tools of trade, namely a kitchen knife; even though there was no evidence that the attack was premeditated the accused used the kitchen knife to inflict the fatal injuries; this court is thus satisfied that the accused is deserving of a deterrent custodial sentence proportionate to the gravity of the offence so as to deter others from committing similar crimes; act as a d it is noted that the accused was arrested on the 15/10/2019 and granted bail on the 18/11/2019 and was remanded for a period of approximately one (1) month; this court therefore finds that this period to be an appropriate sentence.

Findings & Determinations

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



- i. A custodial sentence of Fifteen (15) years imprisonment is found to be an appropriate sentence;
- ii. The period spent in remand of six (6) years be deducted from the sentence.

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

Munene – for Accused

Mercy – present from Lang'ata Prison

