



**State v Muiruri (Criminal Case 24 of 2018)  
[2024] KEHC 10668 (KLR) (16 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10668 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE 24 OF 2018  
DO CHEPKWONY, J  
AUGUST 16, 2024**

**BETWEEN**

**STATE ..... PROSECUTION**

**AND**

**PHYLIS KABURA MUIRURI ..... ACCUSED**

**RULING**

1. The accused Phylis Kabura Muiruri was initially charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) Cap 63 Laws of Kenya.

The particulars of the offence are that:-

“On the 25<sup>th</sup> day of March 2018 at Mlima area in Mwiki sublocation, Kasarani Sub County within Kiambu County the accused murdered Gabriel Mwai”.

2. On 17<sup>th</sup> May, 2018, the accused pleaded ‘Not Guilty’ to the offence of Murder and the trial commenced later, the accused sought for and was granted a plea bargain wherein the agreement dated 29<sup>th</sup> June, 2023 was filed in court. Following this plea bargain Agreement, the charge of murder was substituted with a lesser charge of Manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#). The particulars of offence read as follows;

“On the 25<sup>th</sup> day of March, 2018 at Mlima area in Mwiki sublocation, Kasarani Sub County within Kiambu County, the accused unlawfully killed Gabriel Mwai”.

3. On 27<sup>th</sup> May, 2024, the accused pleaded ‘Guilty’ to the offence of Manslaughter. The facts of the case as read by the Prosecutions Counsel are that on the 25<sup>th</sup> March, 2018, the deceased, Gabriel Mwai Kamau, who was the husband to the Accused, engaged her in a physical fight on the allegations of infidelity and custody of their son. As a result of the fight, the accused stabbed the deceased twice on his chest



- using a kitchen knife. That one Sarah Wairimu Kamau, who is a relative tried to intervene but failed. Afterwards, the accused left the scene and went to surrender herself to Kasarani police station.
4. That a post mortem examination was conducted on the body of the deceased on 28<sup>th</sup> March, 2018 and it revealed the cause of the deceased's death to be exsanguination due to severe chest and axillary injuries due to multiple penetrating sharp force trauma.
  5. The prosecution further stated that investigations were conducted by the DCI of Kasarani whereby a kitchen knife was recovered from the house of the accused and the deceased. Subsequently, the accused was thus charged with the offence of murder.
  6. The prosecution produced the kitchen knife as PEXB1, the Government Analyst report dated 25<sup>th</sup> February, 2020 as PEXB2 (a), Exhibit Memo Form from DCI Kasarani dated 9<sup>th</sup> March, 2018 PEXB 2(b) and the Post mortem report of the City Mortuary dated 28<sup>th</sup> February, 2020 as PEXB 3.
  7. The Accused person confirmed the facts of the case to be true and the court proceeded to convict her on her own plea of guilt. The court then ordered for Pre-sentence report to be availed and the matter was then fixed for records by prosecution, Mitigation of the accused person, availability of pre-bail report and sentence.
  8. On 14<sup>th</sup> August, 2024 when the matter came up for mention for record, mitigation and sentencing.
  9. Mr. Gacharia, the Prosecution's Counsel stated that there were no previous records on the accused person and thus she could be treated as first offender.
  10. The Accused person's Counsel, Mr. Awour stated that he would rely on the recommendations in the Pre-sentence report dated 8<sup>th</sup> July, 2024. He also stated that this was a crime of passion given that the accused person and the deceased were a married couple and were blessed with one issue. He went on to tell the court that the incident had occurred as a result of a physical fight caused by an allegation of infidelity and when the deceased overpowered the accused, she realized what she had done out of anger and was overcome by a sense of betrayal. She realised what she had done too late. He pleaded that the crime was not premeditated as it was committed in the heat of provocation.
  11. According to the defense counsel, the conduct of the accused person going to the police station confirms the regret and remorse she had as she did not attempt to escape. Further, counsel mitigated that it was the accused person's own initiative to enter a plea bargain which unfortunately had taken about 1 and ½ years to be finalised. He stated that all these actions of the accused person show that she wanted to take accountability for her actions. That the accused appreciates the weight of the offence and is willing to take responsibility of the same.
  12. Counsel goes on to stated that the children of the accused person are aged 20 years and 8 years are currently staying with their grandfather. He pleads that they need their mother for parental guidance. Counsel has. Counsel has urged the court to consider the mitigation and grant the accused person a non-custodial sentence of one year or less as she is deeply remorseful.

### **The Pre-sentence report.**

13. The pre-sentence report dated 8<sup>th</sup> July, 2024 was filed on 5<sup>th</sup> August, 2024. According to the Pre-Sentence Report, the accused is aged 40 years old and is mother of two children who are under the care of her parents, who are elderly and sickly. It is stated therein that the accused admitted to committing the crime and is highly remorseful. That she has a strong social support system who have pleaded for lenient sentence for her. It is also reported that the victim's family have indicated that the loss of their kin left a permanent and intense pain in their lives and they pray for justice, while on the part of the



community and the local administration, it has been reported that the accused does not have a criminal history and pray for fairness.

14. Probation Officer who conducted the presentence has recommended that the accused can benefit from a three-year probation sentence, as they have identified the criminogenic needs as anger management and lack of education have led to lack of a stable job, she undertakes to take the course during the sentence she will be taken through guidance and counselling on how to manage anger and during the period of sentence and that she will be empowered to get a vocational or technical skill through the help of her supportive family to equip her for the life ahead.

#### **Analysis and determination.**

15. The court has considered the circumstances under which the offence was committed, the information in the Plea Bargain Agreement dated 29<sup>th</sup> June, 2023 and the recommendation in the pre-sentence report filed on 3<sup>rd</sup> July, 2024 alongside the records and mitigation of the Accused person.
16. The sentence for a charge of Manslaughter is provided for under Section 205 of the *Penal Code* as follows:-

“ Any person who commits the felony of manslaughter is liable imprisonment for life.”

17. In view of all these, the court has also taken into account the amended guidelines in the Muruatetu Case which include a consideration of age of the accused, him being a first offender, her own plea of guilt, character and record. The court has further taken note of the conduct of the Accused person from the time the incident occurred that it was the Accused person who surrendered herself to Kasarani police station and reported the incident.
18. It is worth noting that, although the law has prescribed the punishment for Manslaughter under Section 205 of the *Penal Code* to be life imprisonment, the court has taken note of the accused pleaded guilty to a lesser charge of manslaughter. And in order to balance the rights of the accused person and that of the victim’s family who lost their loved one through the hands of the deceased, the Court finds they too deserve to see that justice has been served.
19. In view of the circumstances presented in the Plea-bargain Agreement, the pre-bail report and Mitigation by the Accused, the court agrees with the Probation Officer that the accused will benefit more from a non-custodial sentence which is aimed at achieving deterrent and restorative results as opposed to retributive results.
20. The court then proceeds to sentence the Accused person to serve three (3) years’ on probation on condition that:-
  - a. The accused person must obey the Supervisory Probation Officer and comply with any condition that they may be set by the Probation Department.
  - b. The Accused must remain of good conduct.
  - c. The Accused must not commit any offence during the probation period.
  - d. That the Accused must attend guidance and counselling sessions to be organised by the Probation Department.
  - e. Failure to comply with any of the above conditions, the accused will be arrested and brought back to this court for a custodial sentence to be passed against her.

It is so ordered.



**RULING DATED AND SIGNED AT KIAMBU THIS 16TH DAY OF AUGUST,2024.**

**D.O. CHEPKWONY**

**JUDGE**

**In the presence of;**

Mr. Martin – Court Assistant

M/s Ndeda counsel for the state

Mr. Awour Counsel for the Accused

