



**Republic v Munyao (Criminal Case E027 of 2021)
[2024] KEHC 11088 (KLR) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11088 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E027 OF 2021
A MSHILA, J
SEPTEMBER 25, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

FRANKLINE MUTHIANI MUNYAO 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 dated 23rd July, 2022 was adopted by the court upon being satisfied that the accused had understood the contents and that he 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 Lydia Wanjiru Wamuthue on the 17th and 20th April, 2021 at Kihungura area in Ruiru Sub- County, within Kiambu County;
4. The facts as read out by the Prosecuting Counsel are as follows; On 19/04/2021 the caretaker of the premises where the accused lived passed by Apartment No 12 rented by the accused and noticed a strong odour coming from the house; on 24/04/2024 the smell got stronger and he noticed flies on the window; after consulting with the Landlord it was mutually agreed that the house be broken into and with the help of his workers the apartment was broken into; therein a body of a female was found covered with plastic;
5. The accused worked as a Chef at a restaurant known as TOSHA; the caretaker passed by the restaurant and after confirming that the accused was on duty he proceeded to report the matter to Ruiru Police Station; whereupon the accused was arrested and the body moved to the City Mortuary; and had rented an apartment Number 12 within a place known as Kambi Moto within Ruiru Sub-County; the



- accused lived alone but would occasionally bring in female visitors; where a therein the lived together for seven (7) years;
6. The post-mortem was conducted by Dr. Peter Ndegwa and the report revealed that the cause of death was spinal injury caused by manual strangulation; Prosecuting Counsel produced the Post Mortem Report which was marked as 'PEXh.1';
 7. The accused stated that the facts as narrated were correct and the court proceeded to convict him on his own plea of 'Guilty' for the offence of Manslaughter c/s to Section 202 as read with Section 205 of the *Penal Code*;
 8. The accused was represented by Learned Counsel Mr. Kalwa whereas Mr. Gacharia was the Prosecuting Counsel for the State; Both counsel were invited to make submissions before sentencing;
 9. In mitigation counsel for the accused submitted that on the fateful night the deceased and the accused had an evening of drinks and by mid-night both were intoxicated and retired to the accused's apartment; at the apartment an altercation ensued which occasioned injuries to the deceased but the circumstances leading to her death were not pre-meditated as both parties were intoxicated; his client had readily pleaded guilty at the earliest onset and thus saved on judicial time; his client was extremely remorseful and prayed for justice to be tempered with mercy; the prosecution had no previous records and that he be treated as a first offender; counsel prayed for a lenient sentence preferably a non-custodial sentence on the grounds that the deceased's family had come to terms with her passing on and they harboured no grudge against the accused and had since forgiven him; the deceased and the accused were both Kambas and on the 28/02/2024 both families had met and had performed Kamba traditional rites to enable him to be accepted back to the community; the accused also committed to look after the two children of the deceased aged nine (9) and seven (7) years; the accused was a family man with a wife and children who were dependent on him;
 10. For those reasons Counsel pleaded for leniency and urged the court to impose a non-custodial sentence to enable the accused to take care and provide for all the children;
 11. Prosecuting counsel submitted that the life that once snuffed out was irrecoverable and it was imperative that the family of the deceased receive justice; the prosecution had no previous records of the convict; a Victim Impact Assessment Report was called for to assist in the sentencing

Analysis

12. The applicable law on sentencing for the offence of manslaughter 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'
13. It is the duty of this Court to impose a sentence that meets the facts and circumstances of the case; The aggravating factors are that the accused's failure to either rush the deceased to hospital; he also failed to report the incident to the police he had instead covered the deceased's body with nylon paper and left it in the apartment whilst he continued on with his life as if nothing untoward had ever happened; the decomposing body of the deceased was only found due to the inquisitiveness of the caretaker; his
14. Defence Counsel submitted that the accused had never fled but never reported the incident the authorities due to fear of being arrested; the accused ought to have exercised restraint during the altercation which then led to a life being lost; The mitigating factors are that the circumstances leading to the unfortunate incident demonstrate that the accused had no premeditated intention; by accepting the Plea Bargain Agreement the accused had not wasted judicial time;



15. Other factors taken into consideration is the Families Agreement attached to the Victim Impact Assessment Report; Having perused the Report it is noted that the accused had taken reconciliatory steps with the victims' family; it is noted that the family had come to terms with their daughters demise and had forgiven him and had accepted the compensation and performed the traditional rites for his admission back to the community; the accused had also committed to assisting in the upbringing of the deceased's children.
16. The accused is a young man aged 47 years and a family man and was the sole breadwinner; lastly, he is found to have no previous record and is deemed to be a first offender;
17. In the light of the mitigating aggravating factors of not reporting and also as a deterrent, this Court is satisfied and that the accused is deserving of a custodial sentence of three (3) years.

Findings & Determinations

18. Having taken all factors into consideration this Court makes the following findings and determinations;
 - i. The accused is convicted on his own plea of guilty for the offence of Manslaughter;
 - ii. The accused is hereby sentenced to a three (3) years custodial sentence.
 - iii. The period spent in custody from date of arrest 20/04/2021 to 5/07/2023 be deducted from his term of sentence.

Orders Accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 25th DAY OF SEPTEMBER, 2024.

A. MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

Gacharia – Prosecuting Counsel for the State

Kalwa – for the Accused

Accused - present

