



**Republic v Muriuki & another (Criminal Case E002 of 2024)
[2024] KEHC 13077 (KLR) (31 October 2024) (Sentence)**

Neutral citation: [2024] KEHC 13077 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE E002 OF 2024
RM MWONGO, J
OCTOBER 31, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

PETERSON MURAGE MURIUKI 1ST ACCUSED

JOSEPH GATERI KAGIRI 2ND ACCUSED

SENTENCE

Judgment On Sentencing

1. Charge: The accused persons are charged with the offence of Murder contrary to Section 203 as read with section 204 of the Penal Code. The particulars are as contained in the Information dated 5th January, 2024 held in the file.
The accused pleaded not guilty to the offence.
2. PBA: However, a Plea-Bargaining Agreement (PBA) dated 29th October, 2024 and signed by the accused under the advice and counsel of the Defence Counsel and by the State Counsel for the DPP, subsequently was availed in Court on 29th October, 2024 together with the Court Form for Recording of a Plea Agreement dated 29th October, 2024.
3. In addition, attached to the PBA is the Post Mortem Report of the deceased dated 18th December, 2023.
4. The Court was satisfied that the accused persons had and have full capacity and competence to enter into the PBA; that they fully understood and understands its content and that they entered into and signed the PBA voluntarily.



5. Further, the Court being satisfied that the accused persons on being taken, on oath, through their rights envisaged in section 137F of the Criminal Procedure Code (CPC) he/she on oath answered Yes/No, confirming they understood their rights.
6. In the light of the foregoing, on 29th October, 2024 this Court recorded the PBA pursuant to Sec 137 CPC and the Plea Agreement was thus adopted as part of the court record.
7. Accordingly, the accused persons were convicted with the offence of Manslaughter.
8. Under Section 205 of the Penal Code the punishment for Manslaughter renders the accused liable for imprisonment for life.
9. Mitigation: Directions on Mitigation having been given by the Court, and the Accused's mitigation having been filed and availed in writing, the Court has taken the same into consideration. The court notes in particular as follows:

In respect of the 1st Accused that he is an elderly man aged 69 years. He has a wife who relies on him for support. He is a first offender and his community is ready to reintegrate him to the society.

In respect of the 2nd Accused, he is a young man aged 29 years, and a husband and father of 2 young children both aged below 5 years. The family looks up to him. He is a first offender and has a supportive community.

For both offenders, the sate proposed a non-custodial sentence.
10. The Probation Officer's Pre-Sentence Report (POR): Dated 28th October, 2024 has also been availed.
11. The POR highlights are as follows: The 1st accused is 69 years old. He is a subsistence farmer. He is married and has three adult children. He suffers from hypertension. He uses alcohol and cigarettes. He is remorseful for his action and regrets the death of the victim.

The 2nd accused is 29 years old. He worked as a farm manager. He is married to Catherine Wambui and they have two children. His attitude towards the offence is that he regrets having committed the offence.
12. In particular, the Victim's family position is as follows: the victim's family reconciled with the offenders. They are not opposed to the accused persons being granted non-custodial sentence.
13. The POR concludes and recommends as follows: The community is ready to live with the offenders. Their families are willing to support them. The probation officer recommends that the accused persons are suitable for a non-custodial sentence.
14. The Court has taken into account the Judiciary Sentencing Policy Guidelines as amended and supplemented by the guidelines given by the Supreme Court in the case of Francis Karioko Muruatetu & Another v Republic [2017] eKLR.
15. The Court has also taken into account the holding in the case of Julius Kitsao Manyeso v R [2020] eKLR where the Court of Appeal held that a life sentence is indeterminate and unconstitutional as it constitutes an unjustifiable discrimination and is unfair and repugnant to the principle of equality before the law. As such the said sentence cannot be meted.
16. The Court notes the Factual basis of the plea, which is as follows: On 12th December, 2023 at about 8 am the deceased was found having been assaulted by members of the public on allegations of having stolen chicken in one of the homesteads in Kabete village, Kianjanga sub-location. He collaborated with the 2nd accused person to arrest the deceased at the market while trying to sell the stolen chicken.



They spread information in the village that the deceased was a thief. Members of the public joined them and beat the deceased to death.

17. The Court notes from the information supplied by the DPP that the accused is a first/ repeat offender / no information is available. The state proposes a non-custodial sentence.
18. Time spent in prison: The Court has also taken into account the time spent in prison by the accused, being 2 months since 5th January, 2024

Disposition

19. Taking into consideration all the above matters, I hereby consider the appropriate sentence to be a Non-Custodial Sentence for both accused persons.
20. Accordingly, I sentence the accused as follows:
 1. Accused 1 shall serve a fifteen (15) months non-custodial sentence.
 2. Accused 2 shall serve a three (3) years non-custodial sentence.
 3. The following conditions shall apply to the sentences:
 - a. Both Accused shall serve community service appropriate to their age and capacity at a place and in such manner as shall be determined by the Probation Officer.
 - b. Both accused shall attend counselling on reintegration and good living in society and/ or any other aspects deemed appropriate by the Probation Officer.
 - c. In the event of breach of the Probation Officer orders the matter to be reported to court for review of the sentences.
21. Orders accordingly.

DATED AT KERUGOYA THIS 31ST DAY OF OCTOBER, 2024

R. MWONGO

JUDGE

Delivered in the presence of:

Peterson Murage Muriuki - Accused in Person

Joseph Gateri Kagiri - Accused in Person

Kiragu for Accused 1

Kiragu holding brief for Nyangati for Accused 2

Mamba for the State

Court Assistant, Rahab

