



**Republic v Ndambiri (Criminal Case E013 of 2022)  
[2024] KEHC 13207 (KLR) (29 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13207 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL CASE E013 OF 2022  
RM MWONGO, J  
OCTOBER 29, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**EPHANTUS KIURA NDAMBIRI ..... ACCUSED**

**JUDGMENT**

1. The accused was charged with Murder on 16<sup>th</sup> July, 2022. On 3<sup>rd</sup> October, 2022 he pleaded not guilty to the offence. The pre-trial had been done but before the hearing commenced, the defence proposed a plea bargain agreement on 28<sup>th</sup> February 2024. The matter was given a date for Plea Bargain Agreement (PBA) settlement on 30<sup>th</sup> April, 2024 to give the parties time to consider the proposal.
2. On 8<sup>th</sup> May, 2024, the parties availed the signed PBA dated 7<sup>th</sup> March 2024 pursuant to Section 137A (i) and 137B of the Criminal Procedure Code. The PBA was adopted by the court pursuant to Section 137G of the Criminal Procedure Code, after the court was 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. The court was also satisfied that the accused was of sound mind.
3. In brief, the facts of the case are that on 12<sup>th</sup> June, 2022, within Murinduko village, the deceased's family was preparing for a party. The accused, being the son of the deceased, arrived home and found the deceased. He inquired whether he could assist in preparing the party. The deceased's response was harsh toward the accused, which resulted in him quickly picking a piece of wood and accosting his mother. He asked her why she always scolded him; demeaning his stature in the family.
4. Suddenly, he struck her on the head, as the argument heated up throwing her into shock as she collapsed with blood oozing profusely from her head. He ran from the scene and boarded a matatu to Embu. He was arrested on 28<sup>th</sup> June, 2022 at Kanyiri Village in Embu County.



5. The post-mortem report dated 14<sup>th</sup> June, 2022 indicates that she died due to severe head injury following blunt trauma in an assault. On the basis of the facts and upon the PBA the court thereby convicted the accused for manslaughter on 8<sup>th</sup> May, 2024. The matter proceeded for mitigation.
6. The defence counsel made the following submissions on mitigation: That the accused was remorseful and seeks a lenient custodial sentence of ten (10) years; He had undergone training and had acquired four certificates. That he is studying for a Diploma in Theology; that he has a young family of 2 children and has separated with his wife; and that he seeks to reunite with his family.
7. The Probation Officer's Report is not favourable save that he has changed his behaviour. It shows that the accused was born in 1974 and dropped out of school in Form 3 due to truancy. He began engaging in deviant behaviour. To help settle him, the family encouraged him to start farming on a piece of land left by his father. He did not honor the offer. He separated from his wife due to substance abuse and has two children: in Form 4 and Form 1. He has records of past criminal behaviour, often gave contradicting information and is not trustworthy. The Probation Report concludes and recommends as follows:

“The accused is therefore unsuitable for community-based service and a custodial sentence is recommended to keep him away from the community”.

8. The victims, namely his siblings, made out and presented to Court a detailed Victim Impact Statement. They set out a historical series of events showing the family's attempts to assist the accused, and his perpetual breaches of their trust. This included his repeated threats to kill his mother, which he finally actualized.
9. They attached various documents, including land lease agreements, a letter calling him to join the National Youth Service; evidence of financial support they had given the accused; pictures and records of him asking his mother for forgiveness and copies of several police reports of him threatening to kill or commit arson.
10. The siblings selected one of them to make a presentation to court and all attended court. They say they agreed to a PBA because they are still mourning their mother and are deeply traumatized. They conclude in their Victim Statement:

“[The accused] has nothing to lose. He is not responsible for the children. He has no land. He has no wife. He feels satisfied that he killed our mother to hurt us and is happy to see us incurring costs to attend court.....

For the justice of our mother and safety of the family our wish it that he be jailed for life. That is because we do not know who is his next victim”.

11. The prosecution submitted that he agreed with the Probation Officer's Report, and recommend a custodial sentence of 34 years. The victims testified that the accused was not a 1<sup>st</sup> offender. They were not ready to reconcile with him and sought that a life sentence be meted.
12. The applicable law on sentence for the offence of manslaughter is found under the provisions of Section 205 of the Penal Code which provides:

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

13. However, the court is cognizant of the Julius Manyeso case (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023) (Judgment) where the Court of Appeal found that a Life Sentence



is an unconstitutional sentence as it deprives the offender the possibility of rehabilitation and reform, hence prejudices his constitutional right and demeans his humanity.

14. The section provides for the maximum sentence that is life imprisonment. This court has taken into consideration the aggravating circumstances in that the convict murdered his mother by hitting her on the back of her head with a timber leading to her death.
15. The Supreme Court decision in Francis Karioko Muruatetu & Another v Republic [2017] eKLR provided the mitigating circumstances to be considered before sentencing as follows:

“In sentencing the court will consider mitigating factors such as the following:

- a. Age of the offender;
- b. Being a first offender;
- c. Whether the offender pleaded guilty;
- d. Character and record of the offender;
- e. Commission of the offence in response to gender-based violence;
- f. The manner in which the offence was committed on the victim;
- g. The physical and psychological effect of the offence on the victim’s family;
- h. Remorsefulness of the offender;
- i. The possibility of reform and social re-adaptation of the offender;
- j. Any other factor that the Court considers relevant”.

### **Disposition**

16. Taking into consideration all the above, including the sentencing guidelines; the Probation Report; the Victim Impact Statement and the aggravating circumstances, the court believes that a custodial sentence is appropriate in the circumstances. The Court anticipates that the accused may achieve reform and rehabilitation whilst in prison custody. The court also considers the safety of the family members.
17. Accordingly, the court sentences the accused to imprisonment for thirty (30) years commencing on 15<sup>th</sup> July 2022.
18. Orders accordingly.

**DELIVERED AT KERUGOYA THIS 29<sup>TH</sup> DAY OF OCTOBER, 2024**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

Ephantus Kiura Ndambiri Accused in Person

Nyangati for Accused

Mamba for the State

Court Assistant, Murage

