



**Republic v Gichobi (Criminal Case E003 of 2023)  
[2024] KEHC 15273 (KLR) (28 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15273 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL CASE E003 OF 2023  
RM MWONGO, J  
NOVEMBER 28, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**LOISE WANGERWE GICHOBI ..... ACCUSED**

**JUDGMENT**

1. Charge: The accused person is 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 23<sup>rd</sup> January, 2023 held in the file. The accused pleaded not guilty to the offence. When the pre - trial dated was fixed, the defence indicated it had broached a Plea-Bargaining Agreement (PBA) with the state.
2. PBA: A Plea-Bargaining Agreement (PBA) dated 5<sup>th</sup> March 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 24<sup>th</sup> October 2024 together with the Court Form for Recording of a Plea Agreement dated 24<sup>th</sup> October, 2024.
3. In addition, attached to the PBA is the Post Mortem Report of the deceased dated 19<sup>th</sup> December, 2022.
4. The Court was satisfied that the accused had and has full capacity and competence to enter into the PBA; that he fully understood and understands its content and that s/he entered into and signed the PBA voluntarily.
5. Further, the Court is satisfied that the accused person on being taken, on oath, through her rights envisaged in section 137F of the Criminal Procedure Code (CPC) she on oath answered Yes/No, confirming she understood her rights.
6. Accordingly, on 24<sup>th</sup> October, 2024 this Court recorded the PBA pursuant to Sec 137 CPC. The Plea Agreement was thus adopted as part of the court record.



7. Accordingly, the accused person was convicted with the offence of Manslaughter.
8. Under Section 205 of the Penal Code the punishment for Manslaughter renders the accused liable to 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.
10. The Probation Officer's Pre-Sentence Report (POR): Dated 21<sup>st</sup> October, 2024 has also been availed.
11. The POR highlights are as follows: That the accused is 27 years old. She committed the offence while in the company of her friends where she was a bartender and was intoxicated having taken alcohol. Her attitude towards the offence is that she admits committing the offence and is remorseful.
12. In particular, the Victim's family position is as follows: They are still pained by the loss of their loved one who was 23 years old. They would wish for restitution from the offender's family.
13. The POR concludes and recommends as follows: the offender has no history of engaging in anti-social behavior save for the current incident. She is the mother of two minors who live with their paternal grandmother. She is unlikely to be harmed by the community. The Probation Officer's Report recommends for a non-custodial sentence but that the offender first serve a custodial sentence to gain marketable skills and afterwards be placed on Community Services Order at Nyanja Primary School for a period of three years.
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 15<sup>th</sup> December, 2022 the deceased, Boniface Wambugu Njagi, arrived at the local Pub Christened Muchina bar at about 1600 hrs and met with Purity Kariuki and the accused. The accused and Purity Kariuki were demanding Kshs 500/= that the deceased had given Isaac Gichobi to hold for the winner of a challenge. It resulted in an altercation at the bar. The accused snatched the deceased's phone and in return the deceased snatched Purity Kariuki's phone with the feud being that the accused was demanding some unpaid debt from the deceased. Just as the deceased was leaving the bar, the accused smashed two chrome bottles and linged with them at the deceased. The bottles landed on his neck slitting him instantly. He bled profusely as he was taken to Embu County Hospital. He was declared dead on arrival.
17. The Court notes from the information supplied by the DPP that the accused is a first offender. The state proposes a sentence of 10 years.
18. Time spent in prison: The Court has also taken into account the time spent in prison by the accused, being 3 months since 23<sup>rd</sup> January, 2023.

## **Disposition**

19. Taking into consideration all the above matters, I hereby consider the appropriate sentence to be a custodial sentence with conditions on non-custodial element - See Republic v Mwangi (Criminal Case E088 of 2023) [2024] KEHC 367 (KLR) (25 January 2024) (Sentence) In her sentencing submissions,



the State Counsel in that case recommended that the offender be sentenced to 10 years' imprisonment for reasons that the accused knew the knife could cause severe injury to the deceased. The court sentenced the accused to 9 years imprisonment.

20. Accordingly, I hereby sentence the accused to ten (10) years imprisonment as follows:
- a. The Accused shall serve the first four (4) years in prison custody.
  - b. The balance of her imprisonment shall be suspended and she shall instead serve that period in Community Service at Nyanja Primary School under the supervision of the Probation Officer.
  - c. The sentence term shall commence on her first incarceration.
21. Orders accordingly.

**DATED AT KERUGOYA THIS 28<sup>TH</sup> DAY OF NOVEMBER, 2024**

**R. MWONGO**

**JUDGE**

Before: Hon. Justice R. Mwango

Court Assistant: Mr. Murage

State Counsel: Mr. Mamba

Accused: Present in Court

Defence Counsel: Mr. Mugo

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