



REPUBLIC OF KENYA



**Republic v Mugo (Criminal Case E001 of 2021)  
[2024] KEHC 15306 (KLR) (28 November 2024) (Sentence)**

Neutral citation: [2024] KEHC 15306 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL CASE E001 OF 2021  
RM MWONGO, J  
NOVEMBER 28, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOHNSON MURIMI MUGO ..... ACCUSED**

**SENTENCE**

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 11<sup>th</sup> January, 2021 held in the file. Initially, the accused pleaded not guilty to the offence.
2. PBA: However, a Plea-Bargaining Agreement (PBA) dated 24<sup>th</sup> October, 2024 and signed by the accused under the advice and counsel of the Defence Counsel and by the State Counsel for the DPP, was subsequently 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 30 December, 2020.
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 he entered into and signed the PBA voluntarily.
5. Further, the Court was satisfied that the accused person on being taken, on oath, through his rights envisaged in section 137F of the Criminal Procedure Code (CPC) he on oath answered Yes, confirming he understood his rights.
6. Accordingly, on 24<sup>th</sup> October, 2024 this Court recorded the PBA pursuant to Sec 137 CPC. The Plea Agreement is thus adopted as part of the Court record.



7. Accordingly, the accused person was convicted with the offence of Manslaughter contrary to Section 202 of the [Penal Code](#).
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.
10. The Probation Officer's Pre-Sentence Report (POR): Dated 8<sup>th</sup> May, 2023 has also been availed.
11. The POR highlights are as follows: The accused is 55 years old. He dropped from school in class 7 due to lack of interest. He engaged in casual jobs of plucking tea leaves within the village. He is not married and has no children. He committed the offence after spending the day with his cousin drinking alcohol and smoking cannabis. They returned to the victim's house at night but began to quarrel over missing cash. They fought and the offender took a panga and slashed the victim fatally. His attitude towards the offence is that he admits and regrets his actions that led to loss of life which were not premeditated. He is remorseful and prays for leniency. He blames it on his addiction to alcohol and cannabis.
12. In particular, the Victim's family position is as follows: The victim was 42 years, was not married and did not have children. He was raised by his foster parents after the death of his mother. The foster parents are bitter with him terming him a threat to their safety and object to a non- custodial sentence. The POR concludes and recommends as follows: The offender is viewed by the community as violent and a nuisance. They would want him to be jailed for a long time. His relatives are not willing to receive him back home due to his criminality. It recommends that the offender is not suitable for a non-custodial sentence.
13. 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.
14. 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.
15. The Court notes the Factual basis of the plea, contained in the PBA which is as follows:

On 21<sup>st</sup> December, 2020 at about 6.10 am, Charles Muturi Kiai heard screams emanating from the home of one Josephat Mwega. He rushed to the scene and found the deceased bleeding on the head. He said that he had been cut by the accused. They escorted him to Karatina hospital. On 22<sup>nd</sup> December, 2020 at 11. 00 am, he died while undergoing treatment. The accused committed the offence after spending the previous day with his cousin drinking alcohol and smoking cannabis. They returned to the victim's house at night but began to quarrel over missing cash. They fought and the deceased stabbed the accused with a knife. The accused took a panga and slashed the deceased fatally.
16. Post-mortem was conducted on the body of the deceased and revealed that the cause of death was severe head injuries secondary to blunt trauma.
17. The Court notes from the information supplied by the DPP that no information is available on the accused criminal record. 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 years since 11<sup>th</sup> January, 2021.

### **Disposition**

19. Taking into consideration all the above matters, I hereby consider the appropriate sentence to be a custodial sentence. In *Republic v Mwangi* (Criminal Case E088 of 2023) [2024] KEHC 367 (KLR) (25 January 2024) (Sentence), it was held:

“In her sentencing submissions, the State Counsel recommended that she (accused) 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. In the present case the accused and deceased had a fight. It was in that altercation that the accused fatally stabbed the deceased.

21. Accordingly, I sentence the accused to eight (8) years imprisonment commencing on the date of his first incarceration.

22. Orders accordingly.

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

.....

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

Before: Hon. Justice R. Mwango

Court Assistant: Mr. Murage

Accused: Present in Court

State Counsel: Mr. Mamba

Defence Counsel: Mr. Igati

