



REPUBLIC OF KENYA



**Republic v Ndungu (Criminal Case 8 of 2019)
[2024] KEHC 14856 (KLR) (27 November 2024) (Sentence)**

Neutral citation: [2024] KEHC 14856 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 8 OF 2019
RM MWONGO, J
NOVEMBER 27, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

SIMON GITARI NDUNGU 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 16th April, 2019 held in the file. The accused initially pleaded not guilty to the offence.
2. PBA: However, a Plea-Bargaining Agreement (PBA) dated 6th November, 2023 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 6th November, 2023 together with the Court Form for Recording of a Plea Agreement dated 6th November, 2023.
3. In addition, attached to the PBA is the Post Mortem Report of the deceased dated 4th April, 2019.
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 is 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 6th November, 2023 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.



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 18th October, 2024 has also been availed.
11. The POR highlights are as follows: The accused is 49 years old. He dropped from school in class 5 due to poverty. He survived on unskilled labour until his arrest. He had no history of substance abuse. He committed the offence due to provocation and acted out of anger as he suspected his wife was having an affair with the deceased. His attitude towards the offence is that he admits committing the offence and is remorseful.
12. In particular, the Victim's family position is as follows: The victim was 48 years, married and had three children. His wife died in 2023 and his first born died in 2024. The two surviving are adults, married and self-reliant. The victim and the offender were good friends and grew up in the same village with no known record of conflict. The victim's family are bitter and object to non-custodial sentence. They are not ready for reconciliation. heir sentiments are that the offender is a violent person. The community do not feel threatened by the offender and do not object to non-custodial sentence.
13. The POR concludes and recommends as follows: the offender has no prior criminal record and relates well with the community. He has good family support system that will help him in rehabilitation. It recommends that the offender is suitable for a non-custodial sentence and he may be placed under a community service order to work at Tebere Secondary School.
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 the 2nd April, 2019 at about 1400 hrs, the deceased (Simon Wainaina Kibunja) alias (Muriithi) visited PW1 (Josephine Wawira Muriuki) being her boyfriend. While seated in her three-seater chair, the accused (Simon Gitari Ndungu) came and entered the house without knocking at the door. He forced himself between them, and squeezed into her three-seater chair and started interrogating them. He faced the deceased and without mincing words asked him, "Mureithi, ni wewe unakujanga huku?" In a flash, he went for a kitchen knife just a meter away and stabbed the deceased on the chest just below the abdomen. The deceased staggered outside the room when the accused turned on her whilst still holding the murder weapon. As he raised the knife to stab her, she intercepted it midway and held it firmly. They wrestled amidst her screams for help. She sustained a deep cut when the accused forced the knife from her grip which left her bleeding profusely as he escaped from the scene. She could still see the deceased lying on his belly near the gate where he had fallen trying to get help. That her screams yielded positive results as neighbours who responded assisted in taking the deceased to hospital using a motorcycle. She was also assisted and taken to Kimbimbi Sub-County Hospital where she received stitches on her palm and was discharged. She admitted that the accused was her former husband but they had separated.



17. Post-mortem: The Post mortem conducted on the body of deceased revealed that the cause of death was "Hemorrhagic shock caused by massive internal hemorrhage following a penetrating chest injury."
18. The Court notes from the information supplied by the DPP that no information is available on his past record. The state proposes a sentence of 10 years.
19. Time spent in prison: The Court has also taken into account the time spent in prison by the accused, being 5 years since 16th April, 2019.

Disposition

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

“In her sentencing submissions, the State Counsel recommended that she 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.”

21. Accordingly, I hereby sentence the accused to imprisonment for a period of Nine (9) years. The sentence to commence on the day the accused was first placed in custody.
22. Orders accordingly.

DATED AT KERUGOYA THIS 27TH DAY OF NOVEMBER 2024

R. MWONGO

JUDGE

Delivered in the presence of:

Before: Hon. Justice R. Mwongo

Court Assistant: Mr. Murage

State Counsel: Mr. Mamba

Defence Counsel: Mr. Muchiri

