



**Republic v Ndura (Criminal Case E010 of 2022)  
[2024] KEHC 14919 (KLR) (27 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14919 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL CASE E010 OF 2022  
RM MWONGO, J  
NOVEMBER 27, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SIMON MAINA NDURA ..... ACCUSED**

**JUDGMENT**

1. The accused was charged with Murder on 8<sup>th</sup> June, 2022, and he pleaded not guilty to the offence. On 12<sup>th</sup> October, 2023 the defence proposed a plea bargain agreement. The matter was given a date for Plea Bargain Agreement settlement on 30<sup>th</sup> January, 2024 to give the parties time to consider the proposal and terms thereof.
2. On 7<sup>th</sup> March, 2024, the parties availed the signed Plea Agreement (PBA) pursuant to Section 137A (i) and 137B of the Criminal Procedure Code.
3. 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 further being satisfied that the accused understood his rights as highlighted in Section 137 F CPC which were read to him, it adopted the PBA and Court Form for recording a PBA pursuant to Section 137 (G) of the CPC.
4. The brief facts of the case as set out in the PBA, are as follows: On 24<sup>th</sup> May, 2022, the Assistant Chief Ngurubani Township was informed through a phone call that the deceased had been murdered in her residence at Reboath Plaza Room 10. It was suspected that the accused, her boyfriend was the culprit. The scene was visited by officers from the DCI who found the body of the deceased facing upwards while half naked. She had a T-shirt on the top while the rest of the body was naked. There was milk like substance oozing from her vagina. The body had a handkerchief tied on the neck, and blood and mucus were oozing from her nose. The police removed the body.



5. The post-mortem report annexed to the PBA dated 25<sup>th</sup> May, 2022 indicates that the deceased died due to asphyxia by ligature strangulation.
6. The court thereby convicted the accused for manslaughter on 7<sup>th</sup> March, 2024. The court ordered the probation officer to file a fresh Pre-Sentence Probation Report and the matter was set for mitigation.
7. On 7<sup>th</sup> May, 2024 the defence counsel made the following submissions on mitigation: That the accused was a 1<sup>st</sup> offender and was remorseful. He was 47 years old and had a young family of 2 children. He was the sole breadwinner. He lost his father 2 years ago and his mother is elderly. The family members, victim's family and the community had forgiven the accused after he had sought reconciliation. Further, the probation report seen by the counsel is favourable. They pray for a non-custodial sentence as recommended in the probation report.
8. The prosecution submitted that the accused should be bound by the court to take full responsibility for the victim's 9-year-old child until she completes her education. In the PBA the prosecution proposes a sentence of 24 years imprisonment, which the defence proposes 3 years' probation.
9. The court notes that after mitigation had been completed the defence applied for bond pending sentencing. The grounds were that the deceased's mother is a widow and she is in custody of the deceased child; if he is incarcerated there will be no bread winner; that it is the child's best interest that should come first; that the child is a minor in school in Murang'a; that the accused had been on bond and had complied fully with the bond terms.
10. In respect of the bond application the state responded that this was a special case; that the court as custodian of the rights of children should consider the application which the state was not opposing; and that the grandmother and child were present in court.
11. The court ruled that this was a rare application, similar to an application for bail pending appeal. The court ultimately granted bond in the sum of Ksh.1,000,000/= with other conditions. One of such conditions was that the accused should report to the officer in charge Wang'uru Police Station on the 1<sup>st</sup> and 15<sup>th</sup> of each month and that a record of such attendances be availed to the court at every proceeding.
12. This record will be taken into account on determining the sentence herein.

### **Analysis and Determination**

13. The Probation Report indicates that the accused is 47 years of age. He is the son of the late Moses Ndora and Esther Wanjiru, a rice farmer in Gathigiriri location where the family owns a three-acre piece of land. He is the fourth born and has 8 siblings. All are adults and self-reliant engaging in casual jobs in the locality. The family is of average economic means and well regarded in the community. The accused dropped out of school in class 7 due to lack of interest. He has no formal training in any trade skills and has been engaged in rice farming. He is married to Elizabeth Wangari, a house wife and they have two children. He is the sole breadwinner of the family.
14. The circumstances of the offence according to the Probation Report are that the accused killed his girlfriend of five years due to a quarrel over some money. They had cohabited peacefully with no history of fighting.
15. The Report indicates that the accused is not viewed as a threat to the community and is not likely to be harmed by members of the public should he be released. His victim was about 29 years old and they had lived together as a husband and wife. She had a 9 years old daughter from a previous relationship. The child is in full custody of the victim's mother where the offender has been providing for her needs.



The victim's family have reconciled with the accused family. They did not object to him serving a non-custodial sentence.

The Probation Report recommends the accused for a non-custodial sentence and a probation order.

16. The applicable law on sentence for the offence of manslaughter is found in Section 205 of the Penal Code which reads as follows:

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

17. 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 girlfriend by strangulation using a handkerchief.

18. In the case of Francis Karioko Muruatetu & Another v Republic [2017] eKLR the Supreme Court 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.

### **Conclusion and Disposition**

18. . Taking into consideration the above sentencing guidelines and the Probation Report that recommended for a non-custodial sentence, the accused satisfies the criteria for a reduced sentence from the maximum sentence of life imprisonment.

19. The Accused has been out on bail during the proceedings, and was also released on bail after conviction. The court has seen the attendance record completed by the officer in charge Wang'uru and has ascertained compliance with post-conviction bond terms.

20. Upon taking all the foregoing matters into account, the court metes the following sentence:

- a) The Accused is sentenced to imprisonment for a term of five (5) years.
- b) Taking into account remission under Section 46(2) of the *Prisons Act* the actual term to be served by the accused is 3 years and 4 months.
- c) The Accused shall serve that remainder of his term on probation performing community service in a facility and programme facilitated by the Probation Officer.



- d) The Accused shall be required at all times to take care and continue taking care of the victim's family namely his child and mother of the deceased.

21. Orders accordingly.

**DELIVERED AT KERUGOYA THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2024**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

Simon Maina Ndura - Accused Present in Court

Magara - for the Accused

Mamba - for the State

Court Assistant, Murage

