



**Republic v Kamutu (Criminal Case E005 of 2020)
[2024] KEHC 14822 (KLR) (26 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14822 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE E005 OF 2020
RM MWONGO, J
NOVEMBER 26, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMSON MURIUKI KAMUTU 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 14th September, 2020 held in the file.
2. On being arraigned, the accused pleaded not guilty to the offence. Subsequently, a Plea-Bargaining Agreement (PBA) dated 20th November, 2024 and signed by the accused under the advice and counsel of the Defence Counsel and by the State Counsel for the DPP, was availed in Court on 20th November, 2024 together with the Court Form for Recording of a Plea Agreement dated 20th November, 2024.
3. In addition, attached to the PBA was the Post Mortem Report of the deceased dated 7th September, 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 highlighted in section 137F of the Criminal Procedure Code (CPC) he on oath answered Yes, confirming he understood his rights.
6. Accordingly, on 20th November, 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 pursuant 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 27th October, 2023 has also been availed.
11. The POR highlights are as follows: The accused is 36 years old. He did not attend basic education due to his medical condition of epilepsy since childhood. He is not married and does not have children. He is suffering from epilepsy and psychotic disorder. He is on active medication at the remand prison. He admitted to killing his father by hitting him on the head with a big log stating that the victim had provoked him by confiscating items belonging to him. His attitude towards the offence is that he admits committing the offence and want to be forgiven by his mother and siblings.
12. In particular, the Victim's family position is as follows: They have forgiven him for killing their father and still regard him as a member of their family. They plead for his release from prison.
13. The POR concludes and recommends as follows: The offender's neighbours and the community described him as a violent person and were opposed to him being granted a non-custodial sentence. The offender needs continuous proper medical treatment for his epilepsy and psychotic disorder. It recommends that the offender is not suitable for a non-custodial sentence.
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: That on 2nd September, 2020 at about 9 am the accused had a confrontation with the deceased, his father. He had requested his father to give him an ox but when he refused, an argument ensued over payments accruing from the ox. The deceased picked a machete and threatened to cut him and he hit him with the stick he was holding in defense. The deceased fell to the ground. He died before reaching Kimbimbi Sub-County Hospital. The Pathologist in the Post-mortem Report formed the opinion that the cause of death was severe head injury following blunt trauma in an assault.
17. The Court notes from the information supplied by the DPP that there is no information available on the accused past criminal record. The state proposes a sentence of 5 years.
18. Time spent in prison: The Court has also taken into account the time spent in prison by the accused, is 4 years since 14th September, 2020.



Disposition

19. Taking into consideration all the above matters, I hereby consider the appropriate sentence to be a non-custodial sentence with conditions. In the case of Republic *v Mwangi (Criminal Case E065 of 2021)* [2024] KEHC 2085 (KLR) (Crim) (4 March 2024) (Sentence) the court held:

“The accused pleaded guilty to the lesser but cognate offence of manslaughter under a plea agreement recorded on October 26, 2023. She had been charged with killing her sister’s 2 ½ year old boy under her care. The court held that:

The accused shall first serve three (3) years’ imprisonment. The imprisonment shall run from 19th August 2021, the date when she was arrested and placed in custody. Thereafter, she shall be released on probation for a period of two (2) years under the care of the relevant probation officer to be appointed by the Probation and After-care Services.

As a further condition, the accused shall continue with psychiatric treatment and faithfully take medication for her psychotic condition. In addition, and in accordance with section 4 (3) of the *Probation of Offenders Act*, she must not commit another offence during her probation, in default of which she will be re-sentenced for the present offence.”

20. Accordingly, and taking into account the accused’s medical condition, I sentence the Accused to six (6) years’ imprisonment. Given that he has served 4 years in custody to-date, the balance of his sentence shall be a non-custodial sentence during which he will be placed on Community Service at Itangi Primary School under the supervision of the Probation Officer.

Orders accordingly.

DATED AT KERUGOYA THIS 26TH DAY OF NOVEMBER 2024

R. MWONGO

JUDGE

Delivered in the presence of:

Before Hon. Justice R. Mwango

Court Assistant: Mr. Murage

State Counsel: Mr. Mamba

Defence Counsel: Ms. Gwaro - holding brief for Otuke for Accused

