



**Republic v Mwangi & another (Criminal Case 16 of 2016)
[2024] KEHC 16368 (KLR) (20 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16368 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 16 OF 2016
RM MWONGO, J
DECEMBER 20, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

DOUGLAS WAWERU MWANGI 1ST ACCUSED

SAMSON GUCHU WAITHAKA 2ND ACCUSED

JUDGMENT

1. This judgment ins only in respect of only the 1st Accused Person Douglas Waweru Mwangi.
2. Charge: The 1st 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 8th November, 2016 held in the file.

The accused both persons pleaded not guilty to the offence and 6 witnesses were heard.
3. PBA: However, a Plea-Bargaining Agreement (PBA) dated 18th December, 2024 and signed by the 1st accused under the advice and counsel of the Defence Counsel and by the State Counsel for the DPP, subsequently was availed in Court on 20th December, 2024 together with the Court Form for Recording of a Plea Agreement dated 19th December, 2024.
4. In addition, attached to the PBA is the Post Mortem Report of the deceased dated 1st November, 2016.
5. The Court was satisfied that the 1st 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.



6. Further, the Court was satisfied that the 1st 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.
7. Accordingly, on 20th December, 2024 this Court recorded the PBA pursuant to Sec 137 CPC. The Plea Agreement was thus adopted as part of the court record.
8. Accordingly, the 1st accused person was convicted with the offence of Manslaughter.
9. Under Section 205 of the Penal Code the punishment for Manslaughter renders the 1st accused liable for imprisonment for life.
10. Mitigation: Directions on Mitigation having been given by the Court, and the 1st Accused's mitigation having been filed and availed in writing, the Court has taken the same into consideration.
11. The Probation Officer's Pre-Sentence Report (POR): Dated 17th December, 2024 has also been availed.
12. The POR highlights are as follows: The accused is 47 years old. He dropped from school after class 8 due to poverty. He survived by doing casual labour. In 1999, he married Beatrice Wanjiru and they bore three children. Cyrus Mwangi who is a casual labourer. Lucy Muthoni who is a form three student in Nairobi and Benson Maina who is five-year-old. His children felt sorry for his incarceration. His wife left the matrimonial home after three years of his arrest. The offender revealed that he abused alcohol and miraa. He committed the offence after arresting the deceased who had jumped into his employer's garage. Together with fellow security men and his employers, they tied him with a rope and beat him thoroughly. His employer promised to contact Kagio Police Officers only to be informed that the suspect had died. His attitude towards the offence is that he admits and regrets his actions that led to the loss of life which were not pre-meditated. He is remorseful and prays for leniency. He has reformed while in custody and had attained two theology certificates.
13. In particular, the Victim's family position is as follows: it is alleged that the victim hailed from Murang'a County and were not able to reach his family. The POR concludes and recommends as follows: the offender is remorseful and prays for leniency. The community believes that he has reformed. His three children are under the custody of his elderly parents. It recommends that the offender is suitable for a non-custodial sentence and recommend he be placed to serve community service order at Kiunga Assistant Chief's Camp.
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:

The particulars of the offence are that on the 17th of October, 2016 at Kianjogu Plaza in Kagio within Kirinyaga County, jointly unlawfully murdered unknown African male adult. Pw3 testified that he was called by the 2nd Accused Person on the night of 16th October, 2016 going to 17th November 2016 that a thief had been arrested at his shop. He testified that he immediately went to the shop but saw three people at the carwash which is next to their shop. That he was able to identify both 1st Accused Person (Douglas Waweru Mwangi) and the 2nd Accused (Samson Gachu Waithera) as the security lights were



on. The 1st accused was a watchman and the 2nd accused the owner of the carwash. That he persuaded the two to release the deceased as there was nothing that had been stolen from the shop but left them with the person who he did not know at about 1 am.

PW4 testified that the deceased was tied on both legs and hands. Pw5 testified that both the accused persons assaulted the suspect. Pw4 testified that he was able to assist the deceased to hospital but he succumbed before getting treatment.

Post-mortem was conducted on the body of the deceased and revealed that the cause of death was due to severe head injury following blunt trauma in an assault.

17. The Court notes from the information supplied by the DPP that the 1st accused is a first/repeat offender / no information is available. The state proposes a non-custodial sentence.
18. Time spent in prison: The Court has also taken into account the time spent in prison by the 1st accused, being 8 years since 8th November, 2016.

Disposition

19. Taking into consideration all the above matters, I hereby consider the appropriate sentence to be a custodial/non-custodial sentence with conditions Republic v Mwangi (Criminal Case E088 of 2023) [2024] KEHC 367 (KLR) (25 January 2024) (Sentence), 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.
 1. Accordingly, I sentence the accused to fifteen (15) years imprisonment with effect from the date he was first incarcerated.
 2. The balance of such sentence, after taking into account remission, shall be henceforth served as a non-custodial sentence whereby the accused shall be engaged in community service in a programme and at Kiunga Assistant Chief's Camp.

Orders accordingly.

DATED AT KERUGOYA THIS 20TH DAY OF DECEMBER, 2024

R. MWONGO

JUDGE

Delivered in the presence of:

Before: Hon. Justice R. Mwango

Court Assistant: Mr. Murage

State Counsel: Mr. Mamba

Defence Counsel: Mr. Mbugua

Accused: Present in Court

