



**Republic v Gichobi (Criminal Case 5 of 2018)
[2024] KEHC 15947 (KLR) (18 December 2024) (Sentence)**

Neutral citation: [2024] KEHC 15947 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 5 OF 2018
RM MWONGO, J
DECEMBER 18, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

BERNARD MURIITHI GICHOBI ACCUSED

SENTENCE

1. Charge: The accused person is charged with an 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 23rd March, 2018 held in the file.

The accused pleaded not guilty to the offence (and - witnesses were heard).
2. PBA: However, a Plea-Bargaining Agreement (PBA) dated 22nd October, 2024 and signed by the accused under the advice and counsel of the Defence Counsel and by the State Counsel for the DPP, subsequently was availed in Court on 16th December, 2024 together with the Court Form for Recording of a Plea Agreement dated 16th December, 2024.
3. In addition, attached to the PBA is the Post Mortem Report of the deceased dated 13th February, 2018.
4. The Court is 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/her rights envisaged in section 137F of the Criminal Procedure Code (CPC) he on oath answered Yes confirming he understood his rights.
6. In addition to the formal PBA the Accused's family and the victim's family entered into another Agreement (Additional Agreement) dated 15th October, 2024. It records an amount of Kshs.800,000/



= as compensation to be paid to the victim's mother; that the deceased's child with the accused shall remain in the custody of the grandmother and that the accused shall have visitation and relationship rights.

7. Accordingly, on 16th December, 2024 this Court recorded the PBA and additional Agreement pursuant to Sec 137 CPC. The two Agreements were thus adopted as part of the court record.
8. Accordingly, the accused person was convicted with the offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.
9. Under Section 205 of the Penal Code the punishment for Manslaughter renders the accused liable for imprisonment for life.
10. 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.
11. The Probation Officer's Pre-Sentence Report (POR): Dated 14th November, 2024 has also been availed.
12. The POR highlights are as follows: The accused is 34 years old. He completed his secondary school education in 2013. He joined the National Youth Service (NYS) Gilgil Campus where he trained until 2015. Throughout his studies, he did not have disciplinary issues. In 2016, he married the deceased, Regina Wanjiru Gichobi and they bore Vincent Muchira Mureithi. Prior to her death, the wife assisted him to run his shop. The circumstances of the offence are that the accused found messages from the victim's lover on her mobile phone. They had an altercation and he killed her in anger. His attitude towards the offence is that he admits and regrets his actions that led to loss of wife's life and the mother of his child.
13. In particular, the Victim's family position is as follows: The victim was 26 years, has three siblings and her parents are deceased. They have reconciled with the offender due to their longstanding family relationship. They agreed that he buys their daughter's child land. He agreed to pay Kshs. 800,000/= . They pray for a non-custodial sentence for the offender is the sole breadwinner of his nuclear family and his elderly grandmother.

The POR concludes and recommends as follows: the offender is viewed by the community favourably and urge the court to grant him non-custodial sentence. He has reached out to the victim's family and they have reconciled. It recommends that the offender is suitable for a non-custodial sentence and be committed to community service orders at Thumaita location chief's office.

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 in the present case.
16. The Court notes the Factual basis of the plea, which is as follows:

On 14th December, 2017 the deceased and the accused who were a couple had an argument over Kshs 26,000/= being the proceeds of a cow they had sold. The accused demanded the money from the deceased who he had given for safe custody and who failed to account for the same. They had a fight. On 30th January, 2018, human body parts namely a human skull and a leg were recovered at Murubara area



under a canal bridge while stacked in a sack. They were taken to Kerugoya Referral Hospital Mortuary pending investigations. Again, on 23rd February, 2018 other body parts were recovered at Ngwaini area, Kimbimbi Sub-location which were also stacked in a sack namely a human torso, buttocks and hips of a female person. Meanwhile, Police in Wang'uru had received a report of a missing person under OB No. 34/24/1/2017. The body was positively identified as that of the deceased. On 3rd February, 2018 the accused was arrested in a new house as he had moved from the house he was staying with the deceased.

The Post- Mortem Form indicates that the cause of death was blunt sharp force trauma to the cervical vertebrae (C5) and the left leg level of the ½ femur.

17. The Court notes that no information is available as to whether the accused is a first or repeat offender. 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, being 2 ½ years since August, 2020.

Disposition

19. 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) the State Counsel recommended that the accused 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. Accordingly, I sentence the accused to six (6) years imprisonment commencing on the day of first incarceration. The last two years of the Accused's remaining sentence shall be non-custodial and the accused shall serve community service at a place and in a programme selected and designed by the County Probation Officer.

Orders accordingly.

DATED AT KERUGOYA THIS 18TH 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. Magee

Accused: Present in Court

