



**Republic v Wairimu & another (Criminal Case 10 of 2019)
[2023] KEHC 803 (KLR) (24 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 803 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL CASE 10 OF 2019
LW GITARI, J
JANUARY 24, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

ANNROSE WAIRIMU 1ST ACCUSED

SAMUEL MURIUKI NJOKA 2ND ACCUSED

JUDGMENT

The two accused Annrose Wairimu and Samuel Muriuki Njoka were initially charged with murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).

This was however reduced after the accused and the State entered a plea bargaining negotiations. The State agreed to reduce the charge and the accused agreed to plead guilty to a lesser charge.

1. The accused now stand charged with the offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. It is alleged that on 16/7/2019 at Rubate Sub-Location within Tharaka Nithi County unlawfully killed Winlight Mugo Mutuoboro. The two accused individually pleaded guilty to the charge. Upon the court entering the plea of guilty, against the accused, the State proceeded and gave the facts of the case as follows:-

Facts:

The facts of this case are that on the 16th day of July, 2019 the deceased herein (Winlight Mugo) a resident of Rubate Sub-Location was at his home at around 5.00p.m. when he saw his neighbor Annrose Wairimu (1st accused) cut some grass in part of his land which is adjacent to the road. He went there and tried to question her why she was trespassing on his land. At that point there was an argument between the two which led to a physical confrontation. The 1st accused started screaming which screams attracted the 2nd accused (Samwel Njoka) who is her brother in-law. The 2nd accused then started assaulting the deceased and in the process he



pushed him to the side of the road and he fell his head on the culvert which was on that side of the road and he started bleeding and thereafter he became unconscious. The deceased's son (Oscar Mwirigi Mugo) heard the commotion from the road as it was not too far from their home and ran to see what was happening and when he reached there he found the accused persons standing next to the deceased while carrying stone and another neighbor by the name Doreen Kanana pleading with them to stop assaulting the deceased. They then disappeared from the scene and left the deceased and other members of public there. The deceased was later carried from the scene to his home and later rushed to the hospital (Mpukoni Health Centre) where he succumbed to injuries while undergoing treatment. The body of the deceased was later subjected to postmortem where the pathologist made an opinion that the cause of death was cardio-pulmonary arrest due to severe head injury from a blunt trauma..

The accused persons were later arrested and charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

2. The accused person(s) admitted the facts and the court proceeded and convicted them on their own plea of guilty.

The matter is therefore before me for determination of the suitable sentence. The accused person opted to have a Social Inquiry report filed in court. The reports were filed in the court.

I have considered the facts of the case. The State urged the court to treat the accused as first offenders. I have also perused the reports which were filed in this court by the Probation Officer. The 1st accused has readily admitted the charge. She pleads with the court for leniency as she had no intention to kill the deceased. She is a mother of two though one of the children is deceased. She is twenty six (26) years old and has re-collected her past life and decided to pursue vocational skills in beauty and hair dressing at Rubate Polytechnic. A none custodial sentence is recommended by the Probation Officer. As for the 2nd accused Samuel Muriuki Njoka, he pleads for leniency. He is aged 47 years and is a father of two teenage girls. He admits the charge and regrets the unfortunate incident which led to the death of the deceased who was his neighbor.

3. The reports shows that the community and the local administration have no objection to have the two accused person released on probation.

I have also considered the Victim Impact Statements which shows that they are Christians who have come to terms with demise of their loved one and they bear no ill will on the accused. They have no objection with the accused being considered for a none custodial sentence.

I have considered that the accused, though after a long period of time have pleaded guilty to a lesser charge of manslaughter. The circumstances under which the deceased met his death through the actions of the accused were not pre-meditated. They had no intention to cause the death of the deceased. It is unfortunate that the actions of the accused led to the death of the deceased. The report by the probation office is positive and the victims do not oppose a none custodial sentence. Sentence is essentially an exercise of discretion by the trial court. Sentence depends on the facts of each case.

I have no hesitation based on the social inquiry reports that this is a suitable case for a none custodial sentence. The accused ought be given an opportunity to serve a none custodial sentence where they will undergo guidance under the watchful eye of the probation officer. None custodial sentence is encouraged in the spirit of decongestion of prison where that sentence is suitable.

For these reasons I order that the two accused will be placed on probation for a period of three (3) years each. They are advised on how to conduct themselves during the period and the consequences for breach of order.



DATED, SIGNED AND DELIVERED AT CHUKA THIS 24TH DAY OF JANUARY 2023.

L.W. GITARI

JUDGE

24/1/2023

The Judgment has been read out in open court.

L.W. GITARI

JUDGE

24/1/2023

