



**Republic v Julius (Criminal Case E009 of 2022)
[2023] KEHC 2729 (KLR) (31 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2729 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL CASE E009 OF 2022
LW GITARI, J
MARCH 31, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

BONIFACE MURITHI JULIUS ACCUSED

RULING

1. The accused herein is charged with the offence of manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#) (Chapter 63 of the Laws of Kenya) following a plea bargain agreement reducing the initial charge of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. The particulars of the offence as contained in the Information dated March 23, 2023 are that on April 17, 2022 at Old Marima Market in Maara Sub-County, within Tharaka-Nithi County, the accused person unlawfully killed Franklin Gitonga Martin.
3. The accused pleaded guilty to the charge.
4. The facts of the case which the accused accepted with reduction of charge were as follows:

Facts

On April 17, 2022, the deceased one Franklin Gitonga Martin who was accompanied by his wife Anne Karemo Kanyoni at about 6.00 p m came back from their places of work. They arrived home where they reside with the accused as their neighbour.

The deceased went to the house of the accused. He went and knocked on the door which was closed. He was accompanied by the his wife. The deceased had wanted to know why they had a strained relationship and kept having disputes. The accused looked outside and saw the deceased. The accused without any provocation came out of the house while armed with a knife and stabbed the deceased with the knife on the lower abdomen. The



accused attempted to stab the deceased a second time but the wife shielded him and also sustained injuries. The deceased rushed back to his house while bleeding profusely. The wife raised an alarm and also called the deceased's father to come and assist take him to hospital.

The father of the deceased, Bosco Njeru, who operates a shop nearby rushed to the scene in his vehicle and assisted to take the deceased to hospital at Chogoria Mission Hospital. The deceased who was still bleeding profusely passed away before reaching hospital. He was pronounced dead on arrival at the hospital. The matter was reported to the police at Marima Police Post.

The accused on learning that the deceased had passed away presented himself at Marima Police Post and admitted that he is the one who stabbed the deceased. Investigations were conducted. A post mortem was conducted at Chuka Hospital by Dr Nkonge. He formed the opinion that the cause of death was severe blood loss secondary to 2° stab wound on the stomach. Police visited the scene and recovered a bloodstained kitchen knife which was used to stab the deceased. Statements were recorded from the wife of the deceased, his father and other witnesses. The accused was then charged.

5. The DPP produced the knife and the post-mortem report as P Exhibits 1, and 2 respectively.
6. This Court found the accused person to be guilty as charged and convicted him on his own plea of guilty.
7. In mitigation, the counsel for the State indicated that he did not have records of the accused. He however buttressed that a life was lost. That the deceased had a family, wife, children, and parents who lost a loved one. That the death was caused in cold blood and there can be no substitute for the life lost. He urged the Court to consider the pain the family went through and pass a sentence that would be a lesson for the society to learn from such unlawful acts.
8. On the other hand, counsel for the accused stated in mitigation that the accused decided on his own volition to plead guilty. That this was after soul searching and considering the circumstances. He stated that the accused is deeply remorseful and seeks mercy and forgiveness from the family. He stated that the accused and the deceased were neighbours where he lived in rented premises at Marima. They lived in small rental rooms at Marima market as they tried to earn a living. That the accused is the one who welcomed the deceased to the premises and they lived amicably. The accused lived in a room which also served as a kitchen. When the accused and deceased came calling, it was most unexpected as nothing had happened between accused and the deceased. The accused was inside assisting the wife to cut some vegetables. When the deceased went knocking, the accused injured the deceased unpremeditated. He had not known what the deceased and the wife were upto. In between, the deceased got injured. That accused did not know that the deceased and his wife were going there. That he used all he had which is the kitchen knife which injured the deceased fatally. He thus urged the court to be lenient in passing a sentence against the accused stating that the accused has a wife and four children with first born at university and the last born being 3 months old. He further urged the court to note that the accused is a church elder and presented himself to the police. In addition, that he is a first offender who found himself on the wrong side of the law. He stated that the accused has already served time in prison and learn his lesson. He thus urged the court to consider passing a non-custodial sentence if possible.

I have considered the fact that the accused person has pleaded guilty to the charge and saved precious judicial time. I have also noted the moving mitigation by the accused which left no doubt in my mind that the accused is deeply remorseful. I however note that the accused acted irresponsibly against his friend without any provocation. There dire consequences for that kind of behavior.



9. The offence of manslaughter is punishable by the maximum penalty of life imprisonment under Section 205 of the Penal Code. However, this represents the maximum sentence which is usually reserved for the worst cases of manslaughter.
10. The *Judiciary Sentencing policy guidelines* are silent on the path to take in manslaughter cases hence the starting point in the determination of a custodial sentence for offences of manslaughter would be case law. Courts are inclined to impose life imprisonment where a deadly weapon was used in committing the offence. In my view, this is a case falling in the category of the most extreme cases of manslaughter considering the deadly murder weapon used in committing the offence.
11. However, considering the facts of the case in totality as well as the sentiments offered in mitigation by counsel for the accused, it is my view that justice is two ways and must be done to the accused and the victims of crime. In situations like the one before me, I should temper justice with mercy as I also ensure that the accused is punished for his irresponsible behavior. A term of imprisonment is called for in the circumstances.

Sentence:

- 12 The accused will serve ten years imprisonment. The sentence to run from May 4, 2022 when the accused was remanded in custody to stand trial.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 31ST DAY OF MARCH 2023.

L.W. GITARI

JUDGE

The ruling has been read out in open court.

