



REPUBLIC OF KENYA



**Republic v Mutua (Criminal Case E020 of 2021)
[2023] KEHC 2824 (KLR) (29 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2824 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E020 OF 2021
PM MULWA, J
MARCH 29, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

PETER MUTUA ACCUSED

RULING

1. Peter Mutua, the accused person herein, was initially charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal code](#). Particulars of the offence were that on March 25, 2021 at Ngoliba area in Thika East Sub-County within Kiambu County he murdered Caroline Mutindi Kilonzo.
2. After a plea bargain the accused person agreed to plead to a lesser charge of Manslaughter. He was accordingly charged with the offence of Manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code. He pleaded guilty and after the facts were read he admitted that they were true and correct and I convicted him of the offence of manslaughter as charged.
3. The brief facts are that the deceased was the accused person's wife but had separated. On March 25, 2021 the accused confronted the deceased near her sister's place where they lived after he had said he wanted to talk to her. Soon thereafter the deceased's nephew who had left them behind heard her screaming and when he ran back to the scene, she was on the ground bleeding from her neck, chest and abdomen. The accused was seen walking away from the scene from where a blood stained knife was recovered. A post-mortem report revealed the deceased had died of multiple stab wounds on the chest, neck and abdomen.
4. The state counsel Mr Gacharia stated they had no records on the convict.
5. In mitigation through defence counsel Ms Kyalo, it was prayed that the accused be given a non-custodial sentence for the reasons that the convict was a first offender, he was a law abiding citizen



before the offence herein, that he had corporated with the DCI and was remorseful for his actions which led to the death of the deceased. It was further stated that since the deceased was the wife of the accused and they had children, he now was the only surviving parent to the children and he deserved the opportunity to provide for them.

6. In a rejoinder, the state counsel Mr Gacharia urged the court to consider that the deceased was a young lady whose life was cut short after she suffered five fatal knife-stabs.
7. According to the state counsel, the reason that a plea bargain was considered was because the families of both the accused and the deceased had reconciled. The court heard that the respective clans from the Akamba community had a sitting and some sort of compensation had been agreed upon. Mr Gacharia undertook to avail the court with the terms of the said agreement. Unfortunately, the same had not been availed as at the time of writing this ruling on sentence.
8. Under section 205 of the Penal Code, manslaughter is punishable by a maximum sentence of life in prison. This is, however, the maximum penalty that is normally reserved for the most serious of such situations. The state has stated that the accused is a first-time offender and as such I rule out life imprisonment.
9. Case law would be the starting point in determining an appropriate sentence for manslaughter offenses. In *V M K v Republic [2015] eKLR* ten years in jail was given for manslaughter. When a dangerous weapon was used in the commission of the crime, courts are more likely to sentence the offender to a long custodial sentence.
10. In the case of *Joseph Kimanzi Munywoki v Republic [2006] eKLR* the court of appeal quashed the conviction of life imprisonment after the accused pleaded guilty for killing out of provocation and found that since it was a very brutal killing, the appellant was sentenced to fifteen (15) years imprisonment .
11. In light of aggravating factors herein, I have adopted a starting point that the accused person deserves a custodial sentence being alive to the fact that the circumstances appear to have turned tragic after a disagreement between the accused person and the deceased which was rather unfortunate as the life of a young woman was cut short.
12. I have considered the fact that the convict is a first offender, a relatively young man at the age of 34 years when he committed the offence. It would seem that the accused has some anger related issues. This would require that he serves a custodial sentence in order to undergo proper anger management before rejoining the society. In that regard a custodial sentence would suffice as appropriate and the period of seven (7) years' imprisonment would be justified in light of the mitigating factors.
13. In accordance with section 333(2) of the *Criminal Procedure Code*, the court should deduct the period spent in remand from the sentence considered appropriate, after all factors have been taken into account. It is noted that the accused has been in custody since March 26, 2021 when he was arrested. I hereby direct that the period spent in custody during the pendency of the trial be taken into account and be deducted from the term.
14. Final Orders :-
 1. Accused person to serve seven (7) years imprisonment which shall commence from March 26, 2021 when he was arrested.
 2. Right of appeal 14 days.



RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 29TH DAY OF MARCH, 2023

P.M. MULWA

JUDGE

In the presence of:

Mr. Kinyua/Mr. Duale – Court Assistants

Accused: Present

Ms. Kyalo for Accused

Mr. Muriuki for the State

