



REPUBLIC OF KENYA



**KENYA LAW**

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**Republic v Meeme (Criminal Case 7 of 2019)  
[2023] KEHC 3801 (KLR) (27 April 2023) (Sentence)**

Neutral citation: [2023] KEHC 3801 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE 7 OF 2019**

**EM MURIITHI, J**

**APRIL 27, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**PETER MUTBARI MEEME ..... ACCUSED**

**SENTENCE**

1. Accused was convicted on his own plea for the offence of manslaughter C/S 202 as read with 205 of the [Penal Code](#).
2. The Probation Officer's report recommended a probation sentence for the accused.
3. The PP has opposed the recommendation for probation sentence urging the court to disregard it primary because the Probation Officer did not consider the nature of the offence and the circumstances in which the offence was committed as required under the [Probation of offenders Act](#):

“Mr Masila: I have noted at the Pre-sentence report. A Probation Officers' Report is not binding but is just persuading as it has not been subjected to cross examination in court.

Section 2 of [Probation of Offenders Act](#) for court to consider Public as recommended by the Probation Officer the court need to reconsider the nature of the offence and circumstances in which offence was committed. It its report, the said 2 links were not considered. A loss of life is a serious matter.

Drunkness should never lead to a loss of life. We need to walk away. The circumstances of the offence, Accused was armed with dangerous weapon, a panga, the force was excessive in the circumstances. Accused was first arraigned in court on January 10, 2019.

The period of incarceration of accused is 4 years. It is sufficient punishment as this has not adhered the 3 objectives of rehabilitation deterrence and rehabilitation.



It will be best achieved when a custodial release is meted out. The court take judicial notice of number of murders in Meru County and it has a duty to prevent future occurrences. The only way to stop community and say enough is enough is by acting out custodial sentence in this matter.”

4. On his part the counsel for the accused urged the court to impose a non-custodial sentence placing reliance on the opinion of the Probation Officer as in expert in the area of penal treatment of offenders:

“Mr Muchomba for Accused: We oppose custodial sentence for (1) Probation Report on record by an officer who is best placed matters of rehabilitation, deterrence and dealing with accused person and how they are reformed once in custody. The Report states that the accused is reformed and in 4 years in custody.

The victim’s family have no qualms as they are forgiven the accused and they are ready to receive him back home. Lawyers should not enter to expert area of the Probation Officer.

High rate of murder of the county. It is improper to use the accused to punish for the offences in Meru. The circumstances of the case is that they were throwing stone at each and there was no intention to kill the deceased. I pray that the accused be committed to a non-custodial sentence has he has already reformed and learnt his lesson.”

5. The court has considered the Probation Officers’ Report and established that it is based on facts different from what was related before the court and accepted by the accused as the facts of the case hereof in his conviction for the offence of manslaughter.

6. The facts according to the Probation Officer’s Report are set out as follows:-

“Circumstances of the Offence

The subject admits to the offence saying the victim was his neighbour and on the material day at around 6 pm the subject was passing by the victim’s home and they picked a quarrel after the victim insulted him over nothing as they were both drunk. The victim rushed home and picked a panga following the subject in a hot pursuit in a bid to cut him. In the doctrine of self-defence as he was catching up with him he took a stone and hit him on the head and the victim passed on at the hospital while undergoing 11treatment.”

7. The facts as set out in the Plea bargain Agreement which were the basis of the conviction are as follows:-

“Facts

9. The facts are that on the 31st day of October 2018 at 6.00p.m while the deceased son one Justin Koome was at home the accused person arrive and started throwing stones at their home. When the deceased heard the noise caused by the accused person he went out to see what was happening. The accused person then got hold of the deceased and started beating him with blows aiming at his head and face. The accused person later took two stones which were outside the deceased’s house and used the same to hit the deceased on his left side of the head as well as the deceased ribs on the left side.

10. Jerusha Nkatha the deceased neighbour did hear noise coming from the deceased home and when she got there she found the accused person hitting the deceased with blows on his head. Jerusha Nkatha tried begging the accused to leave the deceased but the accused went on further assaulting the deceased



by taking stones and hitting him on the left side of the head and ribs. The deceased son began shouting for help.

11. While Joseph Mbaabu M'ithibutu was heading home from work while walking he heard noise before reaching the deceased's home. Joseph Mbaabu M'ithibutu then decided to check out what the noise was about by heading towards the deceased's home. Upon reaching near the deceased home Joseph Mbaabu M'ithibutu saw the accused person hit the deceased with a stone on the head after which the deceased fell down. The accused person ran away.
  12. Justin Koome was then assisted by the deceased's brother Francis Limiri to take the deceased person to Nyambene sub-county hospital. However, the deceased person's condition got worse and he was referred to Meru Level 5 Hospital.
  13. On the 2nd day of November 2018 the deceased person succumbed to his injuries and died. Postmortem was conducted on the 7th day of November 2018 whereby the cause of death was found to be severe head injury due to sharp penetrating object.
  14. The matter was reported at Kangeta Police Patrol Base by Jane Kaguri sister to the deceased. On the 3<sup>rd</sup> day of January 2019 the accused person was arrested by members of public while he was found drinking illicit brew and escorted to Kangeta Police Patrol Base and later transferred to Maua Police Station.”
8. The court may only rely on the facts which are related before the Court and put to, and admitted by, the accused leading to his conviction. The different set of facts related by the Probation Officer which have not been tested on cross-examination before the court must be rejected as counselled by *Kyalo v R* [2009] KLR 325, 329. The reconciliation for probation sentence based on these facts must also be rejected. Contrary to the self-defence angle introduced by the Probation Officer in the pre-sentence report, the accused admitted the facts indicating the he was the aggressor having gone the deceased's home and started throwing stones and when the deceased went out to see what was happening he fatally assaulted him using “two stones which were outside the deceased's house and used the same to hit the deceased on his left side of the head as well as the deceased ribs on the left side”.
  9. The court shall, however, consider the mitigation taken by accused and the fact of this incarceration for a period of 4 years before sentence.
  10. The court considers that the circumstances of the case requires a custodial sentence to serve deterrence and reform objections of penal treatment. The youthful offender shall benefit from the prison discipline and course training geared to his rehabilitation upon release.
  11. The court considers that an imprisonment sentence for a period of 8 years shall meet the penal objectives relevant to this case. The accused shall be released for custody with revision after serving 5 years and 4 months, of which he has already served 4 years pre-trial detention.

## ORDERS

12. Accordingly, for the reasons set out above the accused who has already been convicted on his own plea for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code is sentenced to imprisonment for eight (8) years.
13. The sentence of imprisonment for eight (8) years shall commence on 10/1/2019 when the accused was first remanded to await his trial.



14 Orders accordingly.

**DATED AND DELIVERED THIS 27<sup>TH</sup> DAY OF APRIL, 2023**

**EDWARD M MURIITHI**

**JUDGE**

**Appearances:**

**Mr Muchomba for the Accused.**

**Mr Masila for DPP.**

