



REPUBLIC OF KENYA



KENYA LAW
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**Republic v JMW (Criminal Case E015 of 2021)
[2023] KEHC 19182 (KLR) (27 June 2023) (Sentence)**

Neutral citation: [2023] KEHC 19182 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E015 OF 2021**

**J WAKIAGA, J
JUNE 27, 2023**

BETWEEN

REPUBLIC STATE

AND

JMW ACCUSED

SENTENCE

1. The convict was charged with the offence of Murder Contrary to Section 203 as read with Section 205 of the [Penal Code](#) the particulars of which were that on the 26th day of May 2021 in Kangari Location Kigumo Sub County of Muranga County Murdered PNM.
2. On the 14th day of July 2021, the same appeared in Court for plea to which she stated that the information and the charge was true but upon the advice of her Advocate on record, she later on changed her plea to that of not guilty.
3. On the 7th day of February 2022, her bond application was rejected on the ground that her safety could not be guaranteed and an unfavourable pre-bail report and the case fixed for hearing for 20th April 2022 during which the accused indicated that she intended to pursue plea bargain and since the Doctor was present in Court, his evidence was taken in which PW1 Dr. Robinson Nduati stated that the cause of death was massive haemorrhage due to laceration of the left subclavian artery by a sharp object and the case adjourned.
4. On the 31st of January 2023, the accused appeared before Court and through her Advocate indicated to Court that her attempt at plea bargain had been rejected by the Investing Officer and in the circumstances was willing to change her plea to that of guilty having been advised on the consequences of entering a plea of guilty, which change of plea the Court fixed for 1st March 2023 and upon being warned by the Court of the dangers of entering a plea of guilty and upon the information being read



- to her again and the facts of the offence stated, the same pleaded guilty and a plea of guilty recorded and the Court proceeded to convict the same on her own plea of guilty.
5. In compliance with the judiciary sentencing policy guidelines, the Court called for presentencing report and the mitigation by the convict in camera on account that there was information she wanted to give Court in privacy.
 6. In the presentencing report, it was indicated that the accused parents separated when she was in class four upon which she moved back to maternal grandmother's home on her small plot. She got married in the year 2004 to her first husband with whom they had three children before separating in the year 2012 and in the year 2016, she started dating the deceased on and off relationship which was characterised by numerous conflicts and separations. Both were abusing alcohol and bhang.
 7. At the time of the commission of the offence both were drunk and they had an argument leading into a fight. She did not intend to harm the victim with whom she was living as her husband and a father of her daughter whose death had affected her and the guilt thereof she will have to live with. She pleaded for a non-custodial sentence to enable her take care of her children who were now living in the children home and to utilize the skills she had learned in custody including crocheting, bead work and hair dressing.
 8. Both her mother and grandmother pleaded for leniency on her behalf while the victim's family refused to acknowledge the convict as the deceased wife though they admitted that they were staying together and had a child together and due to the fact that their relationship was riddle with numerous fights, they had pleaded with the victim to get out of the relationship to no avail and were therefore opposed to a non-custodial sentence.
 9. The community members and the local administration were opposed to known custodial sentence which they thought would not deter would be offenders. It was stated that the offender's maternal Aunt was also in remand accused of murder of her lover and therefore there was criminal tendency in her family, so they were not willing to welcome her back.
 10. Through her Advocate Ms Githinji, the convict stated that the deceased was her boyfriend and that they had a bad relationship characterised by domestic abuse. It was submitted by Ms Githinji that the convict had been fully rehabilitated while in custody and wished to live responsible life style. The Court was urged to take into account the period she had served in remand custody and her terminal illness. In support of the sentence to be mated reference was made to the following cases: *Republic vs Juliana Manias Mutheu* [2017] eKLR wherein the convict was sentenced to three (3) years and *Republic vs Stephen Mwai & Another* [2015] eKLR wherein the convict was sentenced to three (3) years.
 11. In her oral testimony in Court, the convict stated that they were both abusing drugs and alcohol and test at the time of the commission of the offence they were both drunk. She stated that she was HIV positive and was on ARV drugs since the year 2017 and that her medical records were in the custody of the prison. She stated that she was remorseful and was always ready to take responsibility for her action by agreeing to plea bargain.
 12. She stated that her child was five years and three months who was now under the custody of her grandmother whom she intended to live with if granted non-custodial sentence which would be beneficial to her since she was to be tested frequently for viral load. She therefore pleaded for a second chance.
 13. On behalf of the State Ms. Gakumu stated that the presentencing report confirmed that the convict suffered from no known illness and that the same had been in custody for only two years and that non-custodial sentence will be unjust taking into account the nature of the offence.



Determination

11. The sentencing objectives are now well settled in Kenya having been captured in the Judiciary Sentencing Policy objectives as follows:
 - (a) Retribution – to punish the offender in a just manner for his criminal conduct
 - (b) Deterrence – to deter the offender from committing a similar offence
 - (c) Rehabilitation – to enable the offender to reform
 - (d) Restorative –to address the needs arising from the criminal conduct such as loss and damages
 - (e) Community protection – to protect the community by incapacitating the offender
 - (f) Denunciation – to communicate the community condemnation.
9. In sentencing the convict, the Court is expected to take into account the blameworthiness of the convict, the victim’s status and the sentencing objective which is best suited to meet the justice of the case and that the Court should not impose a sentence which is excessive, cruel and unusual. The Court should be guided by aggravating and mitigating circumstances and the effect of the crime on the victims.
10. In this cause both the convict and the deceased were under intoxication at the time of the commission of the offence, the convict was in a relationship characterised by domestic violence and had a traumatic past having been separated from her parents while too young and thereafter from her first husband. It is clear that she was looking for love which she missed in young age.
11. In sentencing the convict, I have taken into account the interest of her three young children and the fact that though a life was lost, any custodial sentence will not restore the said life and any deterrence sentence given to the convict might not be in the best interest of her children.
12. This to my mind is a case where mercy and justice ought to kiss each other and the arch of justice ought to lean in favour of the convict.
13. I am therefore of the considered view and hold that a non-custodial sentence will best serve the justice of this case. I therefore sentence the convict to a probation term of three (3) years during which period of time she will be rehabilitated further and help to settle in the society while staying at the home of her maternal grandmother, the only place she has considered home since her parents abandoned her and who knows might be her three minor children might turn out to save this bandit Country.
14. And it is ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 27th DAY OF JUNE, 2023

J. WAKIAGA

JUDGE

In the presence of:

Prosecution: Waweru

No appearance by Mr. Gitonga

Court Assistant - Jackline

