



**Republic v Nyangi (Criminal Case 16 of 2012)
[2023] KEHC 21185 (KLR) (31 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21185 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 16 OF 2012
RM MWONGO, J
JULY 31, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN MBURU NYANGI ACCUSED

JUDGMENT

Background

1. The Accused is charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars are that on 13th November 2007, at Kiamutugu Village in Kirinyaga County, he murdered his mother Juliet Nyanja Nyangi. He was first arraigned in Nyeri High Court on 8th January 2008.
2. The record proceedings show that at the time, the accused had been suffering from chronic mental illness (Schizophrenia) and was unfit to plead. His mental illness continued over the years and it appears that he spent a substantial amount of time committed by the Court at Nyeri Provincial General Hospital and under treatment. On occasion he would be brought to court to establish his fitness to plead.
3. On 27.9.2010, on the strength of a psychiatric report indicating that the accused was fit to plead, his plea was taken in court. He denied the charges and a plea of not guilty was entered. A hearing was not possible for various reasons, and on 13.11.2012, the file was transferred to Kerugoya High Court. Orders were issued for a new counsel to be appointed. The case dragged on with challenges of getting counsel and witnesses.
4. On 9.11.2015 the court was advised that the accused's mental health condition had deteriorated and he was found not fit to stand trial. The court ordered his admission to Mathari Mental Hospital, Nairobi,



for treatment. He was so admitted. The record shows that he was under medical care at Mathari Hospital for the next two years.

5. On 21.2.2017, the accused took plea and pleaded guilty. A plea of guilty was entered. Counsel later pointed out that the accused was incoherent, and orders for his re-admission to hospital were given; On 15.12.2018 the accused was found fit to stand trial. After many hiccups, a hearing was fixed for 11.6.2019. That hearing did not proceed due to absence of witnesses. On 30.10.2019 the accused was again re-admitted to hospital, this time Embu Level 5 hospital, and a trial could not take place.
6. On 9.12.2021 a new counsel, Mr. Igati, took over for the defence. On 8.3.2022 counsel indicated that the accused was ready to take a fresh plea. When the accused took plea, he admitted the offence and a pre-trial date was taken.

Plea Bargaining Agreement (PBA)

7. On the date of the pre-trial, 16th May 2022, counsel indicated that they wished to pursue a Plea-Bargaining Agreement. The arrangements were consented to by the state and the court, and on 31.1.2023 it was reported in court that a PBA was ready for adoption by the court.
8. After compliance of the parties with the provisions of Section 137 CPC, and after the Accused acknowledged that he understood his rights referred to under Section 137 of the CPC, and the court having been satisfied that the accused was of capacity and had voluntarily entered into the PBA, the court adopted the PBA. The accused was, accordingly, convicted for manslaughter contrary to section 202 of the Penal Code. Mitigation was fixed for 7.3.2023.
9. The facts as set out by the state were as follows:

That on 13 November 2007 at about 1.00 pm the deceased went to wake up the accused in his room so he could take his lunch. She then left. On her return, the accused had not woken up and she found that the door was still locked. When the accused finally woke up, he confronted the deceased, hit her on the neck and back repeatedly with a wooden timber. As a result of the attack, the deceased collapsed unconscious.
10. PW1 David Njogu Nyangi, the accused's brother had testimony to the effect that he was at home and witnessed the assault by his brother; that the accused was of unsound mind, and that he was the one who called PW2 Nyangi Kibuyu the deceased's husband, and together they took her to hospital at Kiamutugu Health Centre; and that she was pronounced dead on arrival at the Health Centre.
11. A postmortem by A. K. Gatangi shows that the deceased had a bruised neck, a bruise on the right frontal parietal scalp and dislocation of the atlantoaxial joint. In his opinion the death was due to transection of the spinal cord due to heavy blow to the head.
12. On 7.3.2023 the court ordered a Pre-Sentence report as defence counsel was absent. On 27.7.2023, the court heard the mitigation of the accused. Counsel stated that the accused was arrested in November 2007, and has been in custody for 16 years. He was aged 60 years and is a first offender. He was remorseful and seeks the courts leniency, praying for a non-custodial sentence.

He stated that the accused's family had already forgiven the accused, and seek that he be released to be received at home.
13. Several family members of the accused's family were present in court and indicated that they were ready to receive the accused back home.



14. The state submitted that the accused acted selfishly and by his actions deprived his siblings the love of their mother. The state seeks a custodial sentence of two (2) years.
15. The Probation Officers report filed on 30.5.2023 states that the accused was diagnosed to be suffering from mental illness during his youthful days; that he had been put on medication at home where he was at the time the incident occurred.
16. The Probation Report is worth quoting in some detail as follows:

Offenders Attitude Towards the Offence: The offender stated that he regrets his criminal act and pleads for forgiveness from his siblings, his relatives and leniency from the court. He pledged never to reoffend in future. He also added that his act was not intentional and not pre-meditated, it all happened in a spur of a moment. He pleaded for a non -custodial sentence to allow him re unit with his relatives and get access to healthy meals and medical attention due to his poor health condition.

Community's Attitude and Perception Towards the Offender: The local administration and family members informed that the offender was generally of good conduct and associated well with both his family and community members, he had no history of criminal conduct prior to his arrest and conviction, they all recommended for non-custodial sentence for him. They believe it was a rare accident that is not likely to re-occur in future.

Victim's Impact Assessment: The victim was the offender's biological mother, she raised him well alongside his other siblings upto her time of death. The family was united and bonded well together with no history of the accused conflicting with the victim and/or family members. The family has healed from the grief and have made peace with the offender and they hold no grudge or hatred towards him, they preferred a non-custodial sentence for him. They do not find him a threat to them.

Observation/Conclusion: The offender has a fixed place of abode and a supportive relative and thus, his chances of absconding a non-custodial sentence without trace are minimal.

The offender is not viewed as a threat to community peace and tranquility, it is also unlikely that he will be harmed if placed on a non-custodial sentence.

The relatives of the offender are willing and ready to accept him back home and provide him with the basic needs to assist in his resettlement, reintegration and rehabilitation process on a non-custodial sentence.

There were no compelling reasons found to disqualify him for a non-custodial sentence.

Recommendation: The offender is suitable for a non-custodial sentence and recommended for a Community Service Order to work at Ngariama West Chief's Camp at Kiamutugu.

17. I have carefully considered the mitigation of the accused, the Probation Report and the PBA. I note that the Accused entered a plea of guilty on 8th March 2022, but that subsequently a PBA was entered into, which has concluded with the conviction of the accused for the offence of Manslaughter. Given the mental history of the accused I will take it that the plea of guilty on 8.3.2022 was equivocal, and made more so by the PBA.
18. I have carefully considered the circumstances of the case. From the statement of facts, and the Probation Report the accused evidently had a history of mental illness at the time of committing the offence. As such he would have been entitled to raise the defence of insanity.



19. Further, I have considered the fact that offence was committed in November 2007, and the matter was handled by Justices Makhandia, Serгон, Kasango (retired), Wakiaga, Githua, Limo and Gitari. The matter was never able to proceed for various reasons, chief of which the Accused would relapse into mental incoherence and illness.
20. It was due to this impasse that I was supportive of involvement of the Accused's family in a Plea-Bargaining Agreement pursuant to which his family will accept him back and is willing to assist him in resettlement, reintegration and rehabilitation.
21. The family also showed their support of the accused by attending his hearings. Once the plea-bargaining process commenced. Counsel for the defence and the state are commended for their step, which ensures that justice can at last be meted and the case finalized. It is a stain in our legal system the courts are littered with old cases in which the accused persons are insane and therefore cannot be concluded even during short periods when the accused are coherent level minded.
22. The *Judiciary Sentencing Policy Guidelines* fortunately do make mention of situations where the accused has mental illness. It provides that at the Sentencing hearing mitigating circumstances for lenient sentences could include mental illness. Paragraph 23.8 of the *Guidelines* provides:
- “23.8 Mitigating circumstance warrant a more lenient penalty than would ordinarily be imposed in their absence. They include;
1. A great degree of provocation.
 2. Commitment to repairing the harm caused by the offender's conduct as evidenced by actions such as compensation, reconciliation and restitution prior to conviction.
 3. Negligible harm or damage caused.
 4. Mental illness or impaired functioning of the mind.
 5. Age, where it affects the responsibility of the individual offender.
 6. Playing of a minor role in the offence.
 7. Being a first offender.
 8. Remorsefulness.
 9. Commission of a crime in response to gender-based violence.
 10. Pleading guilty at the earliest opportunity and cooperation with the prosecution and the police.”
23. The statutory sentence for Manslaughter is set out in Section 205 of the *Penal Code* as follows:
- “Any person who commits the felony of manslaughter is liable to imprisonment for life”
24. I have noted from the PBA that the state has proposed a 2 years custodial sentence. Even if I were to mete such sentence, it is clear that the accused having already been in custody since 2007 and in light of Section 333(2) of the *CPC*, would be entitled to immediate discharge. On the other hand, the accused seeks to be released via a non-custodial sentence.



25. Taking into account all the foregoing matters, I am of the view that no retributive, deterrent or rehabilitative object will be served by a custodial sentence. In addition, the accused has already spent sixteen (16) years in custody some of which have been in mental hospitals.
26. Given that the accused's family wishes to take care of the accused, I am in favour of a non-custodial sentence. Accordingly, I order as follows:
- a. The Accused is sentenced to three (3) years non-custodial sentence with effect from the date hereof.
 - b. The sentence shall be carried out in a programme designed and supervised by the Probation Officer and in conjunction with a Medical Officer responsible for Psychiatric matters.
 - c. The Probation Officer shall report to the court any matters or issues requiring the court's assistance as and when they arise. In any event, the Probation Officer shall report to the court at the end of every twelve (12) months of the sentence period on any matters that require the court's attention and or assistance.
 - d. The file shall be closed save for purposes of the reports required to be made as been set out.
27. Orders accordingly.

DATED AT KERUGOYA THIS 31ST DAY OF JULY 2023

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R. MWONGO

JUDGE

Delivered in the presence of:

Applicant in Person

Mr. Igati for Applicant

Mamba for State

Mr. Murage - Court Assistant

