



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v BLJ (Criminal Case E081 of 2021)  
[2023] KEHC 21509 (KLR) (16 August 2023) (Sentence)**

Neutral citation: [2023] KEHC 21509 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE E081 OF 2021  
EM MURIITHI, J  
AUGUST 16, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**BLJ ..... ACCUSED**

**SENTENCE**

1. The accused has been convicted by her own plea of guilty for the offence of manslaughter contrary to section 202 as read with 205 of the [Penal Code](#) following a plea bargain agreement dated 22/3/2023. The facts of the case which the accused admitted in the Plea Agreement at paragraphs 9-13 are as follows:

“Facts

9. The facts are that in the month of March, 2021 the accused person met with the deceased person Jackson Kirimi Ikombo within Mwangaza area in Isiolo County where the deceased started pursuing the accused person romantically. However, the accused informed the deceased that she was not interested.
10. Towards the end of March 2021, on a Friday at around 2200hours the accused person was on her way from her boyfriend’s house heading back to her mother’s house within Mwangaza. The accused person then met with the deceased who grabbed the accused and overpowered her. In addition to this the deceased went on to rape the accused. However the accused person did not report the matter.
11. On the 8<sup>th</sup> day of December, 2021 at around 1700hours the accused person had gone to Mwangaza “C” Pub where she met the deceased person. Immediately the accused person began shouting that the deceased had raped her. The



deceased grabbed the accused person. During the commotion between the accused person and deceased, the accused managed to grabbed sword from the deceased belt and stabbed the same on the deceased chest. The accused person then ran away. The deceased was taken to Isiolo County Referral and Teaching Hospital for treatment. However, after a short time undergoing treatment the deceased succumbed to his injuries and died.

12. The accused person was arrested by members of public and taken to the Chief's office. Police from Kula Mawe Police Station had already arrived at the scene and rearrested the accused person and escorted her to Isiolo Police Station.
13. Post mortem was conducted on the 11<sup>th</sup> day of December, 2021 where the cause of death was found to be excessive blood loss after sharp penetrating injuries on the chest wall.
14. The accused person was then arraigned before court and charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code which after entering into a Plea Agreement the charge was reduced to that of Manslaughter contrary to section 202 as read with section 205 of the Penal Code.”

2. The counsel for the DPP and for the Accused made respective submissions during the sentencing / mitigation proceedings. Counsel for the DPP urged custodial sentence principally as follows:

“The circumstances indicate that the stabbing was not necessary and death occurred and inasmuch as accused was provoked, there were other means of preventing the fatality on the deceased.

Loss of life. It is unfortunate looking at the whole scenario. I pray that the accused serves a custodial sentence for her guidance on anger management and how to deal with such scenario.”

3. For the Accused, Counsel, urged the court to consider the pre-sentence report ‘as the truth of what transpired and the circumstances of the said attack’ and prayed for a non-custodial sentence for the youthful accused aged 21 years and who had been in custody for one year.
4. The Probation Officer on request by the court made presentence report dated 15/5/2023 recommending a probation sentence as follows:

“Conclusion and Recommendation

[B]efore the court is a 20 year old single woman with one child, there are no records for previous criminal activities though her family and area assistant chief confirms due to abuse of alcohol she could occasionally be involved in fights when she was under influence of alcohol. She understands the magnitude of the offence which she alleges she committed while she was under influence of alcohol and uncontrolled anger.

She has strong family support system (mother, brother and her two sisters). The mother suggests she will relocate her in her rural home in Kibiru where she has also resettled to start life afresh; and will give her a chance to be away from her acquaintances who had negative influence on her character. The victim's family opposes the idea of the offender being granted a non-custodial sentence citing it is far much below what they expect from this honourable court. The victim's family resides in Timau area of Buuri Sub-County, though



the father lives in Mwangaza (they are separated with victim's mother). Currently, the father of the victim could not comprehend anything. This family states the mother to the victim suffered depression after the death of her son and the incarceration of the other son who is serving a prison sentence.

Based on the information provided here in, and the circumstance so fthe offence and the attitude of the offender, I recommend the offender be committed to serve three years' Probation Order. The family has committed to have her be relocated to Kibiru area of Tigania West where she will be away from peer influence if released on Probation Order. Our office is committed to come up with suitable treatment plan which will facilitate her rehabilitation and re-integration if placed on non-custodial sentence.”

5. This case sadly calls to mind the growing incidents of sexual and gender based violence cases in our communities.

### **Sentence**

6. The circumstances of the killing, where the accused who had previously been raped by the deceased came upon the deceased and upon charging him of the offence a commotion ensued in which the accused stabbed the deceased using his own sword was such as to afford provocation by the reminder of the rape, not only commutes the offence in the killing from one of murder to one of manslaughter in terms of sections 207 and 208 of the Penal Code but also diminishes the accused's blameworthiness. Had the killing occurred at the time of the rape, the exonerating defence of self-defence (under section 17 of the Penal Code) would have been maintainable!
7. The Court notes that the Accused has been in prison custody on pre-trial detention since 29/12/2021, a period of one (1) year seven (7) months.
8. The Court further considers in terms of section 4 (2) of the *Probation of Offenders Act* that the accused may benefit from supervision under a Probation Order. Section 4 (2) of the *Probation of Offenders Act* provides as follows:
  - “(2) Where any person is convicted of an offence by the High Court and the court is of the opinion that, having regard to the age, character, antecedents, home surroundings health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may, in lieu of sentencing him to any punishment, make a probation order, and may require the offender to enter into a recognizance, with or without sureties, in such sum as the court may deem fit.”
9. The court considers appropriate a reform and rehabilitation treatment afforded by the supervision possible under a Probation Order for the maximum three (3) years as recommended by the Probation Department.

### **Orders**

10. Accordingly, for the reasons set out above, having convicted the accused on her own plea of guilty for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code, now sentences the accused to serve an imprisonment term of two (2) years and in addition serve a probation sentence for a period of three (3) years from today.



11. The sentence of imprisonment for 2 years commences on 29<sup>th</sup> December 2021, the date when the accused was remanded for trial, and she has, therefore, with remission, already served the imprisonment in full.
12. There shall, therefore, be an order for the release of the accused to be placed on probation unless she is otherwise lawfully held.

Order accordingly.

**DATED AND DELIVERED THIS 16<sup>TH</sup> DAY OF AUGUST, 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearance

Mr. Igweta Advocate for the Accused.

Mr. Masila Principal Prosecution Counsel for the DPP.

