



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mungai (Criminal Case 3 of 2018)
[2023] KEHC 24793 (KLR) (30 October 2023) (Sentence)**

Neutral citation: [2023] KEHC 24793 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE 3 OF 2018
RM MWONGO, J
OCTOBER 30, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

MARY NJERI MUNGAI ACCUSED

SENTENCE

1. The Accused was charged with the offence of Murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence were that on the 15th day of November, 2015 in Nakuru County, she murdered Emily Mumbi Thiarara.
2. After the close of the hearing, the Court found no evidence of intent to murder, and accordingly sentenced the accused was convicted with the lesser offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*.
3. The court directed that mitigation be by written submissions which the defence did. In mitigation, the accused stated that she was aged only 27 years and had her entire life before her; that she had a son, R, aged 8 years who she has been separated from since her incarceration and she needs to bring him up; that she was deeply remorseful that her actions had contributed to the deceased's death; that she allowed her emotions to get the better of her; that she is generally of good character and has greatly improved since her long period in custody; and that she is a first offender and has never had a criminal case before.
4. Further, she stated that she has reformed since she went into custody, and has learnt to better control her emotions; that she had vowed to cease using alcohol and other drugs as they had contributed to her impaired judgment; that she has acquired two certificates: one in paralegal training and the other in Biblical Studies; that she has a supportive family that is ready to take her back and support her; that



5. She implored the court to grant her a non-custodial sentence as the court had found in the Judgment that she had no intention at all in killing the victim; that she had been involved in a fight which sucked in the deceased, the offender's mother, the victim and the victim's brother.
6. Finally, the offender implored the Court to take into account the recommendation of the Probation Report which was positive; and to take into account that the offender had been in custody for almost 6 years since her arrest on 15th February 2018.
7. The prosecution made no submissions on sentencing.
8. The Probation Report indicates that the accused is the last born in her family, and that her parents separated when she was young, and her father remarried; that she has three step siblings; that she married after dropping out of Form Four, but the marriage broke up after just about a year; that she got into a different relationship in which she had her son Ryan who is in Grade 1; that after the offence she relocated to Kiambu to live with her maternal aunt; did not work
9. The Report indicates that the offender had abused alcohol and bhang during her teenage years; that she regrets the offence and that she has since learnt to deal with her anger; that she was known to be violent especially when intoxicated; that she ran away after committing the offence; and that her family visits her regularly in prison.
10. According to the Report, the victim's family are still bitter at the loss of their daughter who was a mother of two children aged 10, and 8 years; and they feel that the offender should pay for ending their daughter's life through a custodial sentence.
11. The Probation Report recommends a non-custodial sentence of three (3) years for the accused during which she would be accorded close supervision to address her anger and violent behaviour and address conflict resolution issues. The Report finally recommends:

“Close supervision and community rehabilitation....This will be to address anger, violent behaviour, conflict resolution mechanisms and intoxicating behaviour to ensure that she does not re-offend”

12. The applicable law on sentence for the offence of manslaughter is found under the provisions of Section 205 of the *Penal Code* which provides:

“Any person who commits the felony of manslaughter is liable to imprisonment for life”

The section provides for the maximum sentence that is life imprisonment.

13. The supreme Court decision in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR held that in sentencing, a court should take into account the mitigating circumstances before sentencing, and that the following matters should guide the court:

“In sentencing the court will consider mitigating factors such as the following;

- a. Age of the offender;
- b. Being a first offender;
- c. Whether the offender pleaded guilty;
- d. Character and record of the offender;



- e. Commission of the offence in response to gender-based violence;
 - f. The manner in which the offence was committed on the victim;
 - g. The physical and psychological effect of the offence on the victim's family;
 - h. Remorsefulness of the offender;
 - i. The possibility of reform and social re-adaptation of the offender;
 - j. Any other factor that the Court considers relevant.
14. Taking into consideration the accused's mitigation, the above sentencing guidelines and the Probation Report that recommends a non-custodial sentence, the accused satisfies the criteria for a reduced sentence from the maximum sentence of life imprisonment. I have also taken into account that the accused has been in prison for the last five and a half (5 ½) years; and the nature of the incident which was a family fight.
15. Accordingly, I sentence the accused to fifteen (15) years imprisonment commencing from the first date of incarceration. I also take into account that the accused would be entitled to remission of one third of her sentence which would leave a balance of 10 years of the sentence term, from which term 5 years and seven months already spent in prison shall be deducted; leaving four (4) years and five (5) months out of the term outstanding.
16. The accused shall serve the last three (3) years of her sentence as a non-custodial sentence. During that period, the accused shall:
- a. Be engaged in a Community Service Programme designed and facilitated by the Probation Officer.
 - b. Undertake a programme of counselling and guidance in, amongst others, anger management, to enable her to live well again.
17. Orders accordingly.

DATED AND SIGNED IN KERUGOYA THIS 30TH DAY OF OCTOBER, 2023

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R. MWONGO

JUDGE

Delivered Virtually in the presence of:

- 1. State Counsel - Ndiema
- 2. Karanja for accused
- 3. Accused - Present at Naivasha Women's Prison
- 4. Quinter - Court Assistant

