



**Republic v Michuki (Criminal Case E042 of 2021)
[2023] KEHC 24311 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24311 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E042 OF 2021
HM NYAGA, J
OCTOBER 26, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

CHARLES MAINA MICHUKI ACCUSED

RULING

1. The accused was initially charged with Murder contrary to Section 203 as read with 204 of the [Penal Code](#). The particulars were that on 19th August, 2021 at Kiwanja Ndege Village in Njoro Township, Njoro Sub-County within Nakuru County he murdered Harrison Kamande.
2. When accused was arraigned in court on 27th August, 2021 he pleaded not guilty to the charge.
3. Subsequently, on 2nd March, 2023, the defence sought to engage in a plea bargaining agreement, to which the prosecution consented. Thereafter, the parties entered into a plea bargaining agreement pursuant to the provisions of Section 137A to 137E of the [Criminal Procedure Code](#) (CPC), duly signed on 26th May, 2023.
4. The examined the accused in accordance with Section 137F of the [Criminal Procedure Code](#) and established that the plea bargain was unequivocal and was entered into voluntarily, as provided for under section 137G. It then accepted the plea agreement.
5. Thereafter the charges were reduced to Manslaughter, contrary to section 202 as read with section 205 of the [Penal Code](#). The elements of the charge were then read out to the accused who pleaded guilty and subsequently admitted the facts as set out in the plea bargain agreement. He was then convicted on his own plea of guilty.
6. The post mortem report was produced as Exhibit No.1.



7. In her sentencing submissions, the state counsel recommended that he be sentenced to 10 years' imprisonment for reasons that a life was lost and that the accused could have handled the deceased in a different way.
8. The defence counsel, Mr. Ooga, in his submissions and mitigation pleaded for leniency and stated that the accused is 32 years old and married with one child aged 6 years old. He submitted that prior to his arrest he was running a small business and supported his family. He contended that the accused is a first time offender and he is remorseful, and prayed that a non-custodial sentence be imposed.
9. I ordered the state to avail the accused person's parents and siblings for Victim Impact statement and on 5th October, 2023 the accused person's parents and one of his siblings told court that they have agreed as a family to forgive the accused.

Determination

10. The only issue for determination is what would constitute an adequate, appropriate and just sentence in the circumstances of this case?
11. The Supreme Court in *Francis Karioko Muruatetu & Another vs Republic*, Petition No. 15 of 2015, as a guide in sentencing held that:

“(71) ...the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- 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. remorsefulness of the offender;
- g. the possibility of reform and social re-adaptation of the offender;
- h. any other factor that the Court considers relevant.”

12. The Supreme Court in *Muruatetu Case* (supra) appreciated that:

“In Kenya, many courts have highlighted the principles of sentencing. One such case is the High Court criminal appeal decision in *Dahir Hussein v. Republic* Criminal Appeal No. 1 of 2015; [2015] eKLR, where the High Court held that the objectives include: “deterrence, rehabilitation, accountability for one's actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim.” The 2016



Judiciary of Kenya Sentencing Policy Guidelines lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

“Sentences are imposed to meet the following objectives:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.
5. Community protection: To protect the community by incapacitating the offender.
6. Denunciation: To communicate the community’s condemnation of the criminal conduct.”

13. I have considered the circumstances of the case, the submissions by the State Counsel and the mitigation by the defence counsel.
14. According to the facts of the case, the deceased was the convict’s biological brother. The deceased and accused lived in the same house. On 19th August, 2021 at 9.45 pm the deceased arrived home drunk and found the deceased already asleep .He started demanding for food which lead to a quarrel and the accused hit him on the head with an eucalyptus stick inflicting serious head injuries. The deceased died immediately and his father Francis Maina reported the incident at DCI Njoro. The crime scene was processed and the body of the deceased moved to Egerton Funeral Home and an autopsy conducted on 23rd August 2023.
15. According to the post mortem report the deceased died as a result of severe head injury attended by skull fracture, subdural hematoma and brain laceration due to multiple blunt trauma to the head in keeping with fatal assault.
16. In terms of Section 202 as read with section 205 of the *Penal Code*, the accused upon being convicted is liable to serve life imprisonment. However, this represents the maximum sentence which is usually reserved for the most aggravated of such cases. I do not consider this to be a case falling in the said category.
17. The discretion in sentencing rests with the trial judge because he or she has the knowledge of the relevant facts before him or her and in many instances, has observed the accused and witnesses’



demeanour. The discretion must however be exercised judiciously. In the persuasive Nigerian case of *African Continents Bank vs Nuamani* [1991] NWLI (part186)486, it was observed that,

“The exercise of court’s discretion is said to be judicial if the judge invokes the power in his capacity as a judge qua law. An exercise of discretionary power will be said to be judicial, if the power is exercised in accordance with the enabling statutes, discretionary power is said to be judicious if it arises or conveys the intellectual wisdom or prudent intellectual capacity of the judge. The exercise must be based on a sound and sensible judgment with a view to doing justice to the parties.”

18. The mitigating factors that I have taken into consideration are, first, that the accused readily pleaded guilty and thus saved the court on judicial time. Secondly, the facts narrated by the state counsel reveal that the killing was not premeditated. It was instigated by the deceased who arrived home while drunk and demanded for food from the accused who was already asleep. Thirdly, the accused has also expressed his remorse and lastly, he is a first offender.
19. It is well settled law that a sentence must reflect the accused’s blameworthiness for the offence. See *Omuse vs R* (2009) KLR 214, where it was held that the sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that the proper exercise of discretion in sentencing requires the Court to consider that fact and circumstances of the case in their entirety before settling for any given sentence.
20. In this case, it was the deceased who provoked the quarrel as he arrived home while drunk and started demanding for food from the accused who was already asleep. The accused appears to have acted in the heat of the moment when he inflicted fatal injuries to the deceased. Had the deceased not hit the accused, who knows, he could be alive today. The death might not have been intended but it can be argued that had the accused controlled his anger, his brother would be alive today. A life was lost and this calls for an appropriate sentence.
21. In *Republic vs Chumba* (Criminal Case E080 of 2021) [2023] KEHC 387 (KLR) (25 January 2023) (Judgment) the deceased picked a quarrel with the accused person that escalated into a fight that led to his untimely demise. The deceased died due to a stab wound to his stomach that caused excessive bleeding. The court while sentencing the accused noted that the accused did not have a premeditated intention of killing the deceased and sentenced him to 3 years imprisonment.
22. In *Republic vs Kipchirchir* (Criminal Case E010 of 2021) [2022] KEHC 12983 (KLR) (21 September 2022) (Judgment) the accused picked a quarrel with the deceased’s friend Henry after he termed his as uncircumcised. The said quarrel escalated into a fight and the deceased joined to try and separate the scuffle between the accused with Henry and he was stabbed by the accused. The court noted that killing of the deceased was not premeditated albeit the same was unlawful and wrongful and it sentenced the accused to six (6) years imprisonment.
23. In the case of *Republic vs Daniel Okello Rapuch* [2017] eKLR, a sentence of 12 months’ imprisonment was meted out to a man who killed another on the allegation of being involved in an illicit love affair with his girlfriend.
24. In *Republic vs Collet Thabitha Wafula* [2016] eKLR a sentence of three (3) years non-custodial sentence was meted out to a woman who killed her husband on the allegation of false accusation of unfaithfulness. The court took into account that the fight was provoked by the deceased and the accused was acting in self-defence.



25. The court has to balance between the need to have the accused atone for his actions and the need to exercise leniency, given the circumstances of the case. In this regard I think that the sentenced proposed by the State is very punitive and inappropriate.
26. I note that the accused has been in custody for a period of about 2 years. However, after considering all the circumstances, I still find that the Accused needs a custodial sentence to rehabilitate him and to be a warning to others that it does not pay to take law into one's hands and that violence do not pay at all. His brother was drunk and he ought to have acted like the sober one, and avoided the conflict. Hitting his inebriated brother like he did was bound to end up with an unwanted consequence, and in this case it turned out to be tragic.
27. Consequently, I order that the accused serves four (4) years imprisonment. This will give him time to reflect on what he did and prepare to reconcile with his family.
28. Under Section 333(2) of the *Criminal Procedure Code*, the accused's sentence will commence on 27th August, 2021, when he was first remanded into lawful custody.
29. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 26TH DAY OF OCTOBER, 2023.

H. M. NYAGA

JUDGE

