



REPUBLIC OF KENYA



**Republic v Jerusa (Criminal Case E008 of 2020)
[2023] KEHC 26065 (KLR) (28 November 2023) (Judgment)**

Neutral citation: [2023] KEHC 26065 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE E008 OF 2020
RM MWONGO, J
NOVEMBER 28, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

PURITY NKATHA JERUSA ACCUSED

JUDGMENT

1. The accused was charged with Murder of her good friend, Faith Wanja Mutugi, on 18th September, 2020. They were coming from having a drink at a drinking den at 2.00am, when a misunderstanding arose just before they parted ways. They got into a brawl in which the accused hit the deceased with a vodka bottle, and she fell down.
2. She was taken to Kairiini Dispensary, and on 19th September, her condition worsened, so she was taken to Karatina Sub-county hospital where she passed on.
3. The Post mortem report shows that the deceased had cut wounds on the head, bruises on the left shoulder and a fractured right hand. The cause of death is indicated as:

“Severe head and limb injuries secondary to sharp and blunt trauma to the head and right hand“
4. On 3rd November, 2020 the accused pleaded not guilty to the offence. However, on 7th December, 2021 the defence proposed a plea bargain agreement. The matter was given a date for Plea Bargain Agreement settlement on 9th March, 2023 to give the parties time to consider the proposal.
5. On 9th March, 2023, the parties availed the signed Plea Agreement pursuant to Section 137A (i) and 137B of the *Criminal Procedure Code*.



6. The Plea Bargain Agreement dated 7th March, 2023 was adopted by the court pursuant to Section 137G of the *Criminal Procedure Code*. Further, the court being satisfied that the accused had understood the contents and that he had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion.
7. The court thereby convicted the accused for manslaughter on 9th March, 2023. The Pre-Sentence Probation Report had been filed hence the matter was set for mitigation on 6th June, 2023.
8. The defence counsel made the following submissions on mitigation: That the accused was a first offender and remorseful; that she had been rehabilitated while in prison and was baptized; that she prays for the court's leniency; that she had 5 children and 2 of them were minors when she was arrested; and that she was keen to reunite with her children.
9. The probation report is gives the difficult background of the accused whose mother was an illicit brewer. She had been a house-help from age ten until she became of age. She got into several marriages which did not last.
10. The probation report indicates that the accused had sought forgiveness from the victim just before she breathed her last breath; that the community had a favourable impression of the accused as a hard worker who was never known to engage in activities detrimental to peaceful co-existence in the community; that they were shocked to learn of the brawl and her subsequent death. The community did not object to a non-custodial sentence for the offender.
11. The probation report further indicates that the victim's husband was still grieving; that he had to abandon his green grocer business in Nakuru so that he could take care of his children; that the death of his wife, from whom he had separated, cost him a lot in burial expenses; and school fees for the younger children. He sought to be compensated and opposes the accused's release back to the community
12. The probation officer observed that the accused had no criminal history; that the incident was not pre-meditated, but a result of intoxication; that the accused's brother in law and his wife are receptive to the accused's release to continue taking care of her children. The report recommends that:

“...the offender is suitable for a non-custodial mode of treatment and recommends a probation order during which she will be accorded guidance and counselling in anger management. She will also be assisted to re-unite with her children”
13. They prayed for a non-custodial sentence.
14. The prosecution submitted that the accused had gained some skills while in prison. They opposed a non-custodial sentence as the victim has left two young children. The accused needed to control her anger. The prosecution prayed for a custodial sentence of 5 years.

Analysis and determination

15. The Probation Report indicates that the accused is 41 years of age. Her mother was a single parent with three children. The accused is the last born. They lived in Meru in rented houses as they did not have land. She has lost contact with her siblings.
16. The accused dropped out of school in class one due to poverty Her mother sold illicit brew for survival. She worked as a house help in Nyeri until she was married. She bore 4 children before separation with her husband in 2016. She relocated to Kairini market to work as a casual labourer. She engaged in a short-lived second marriage and bore a fifth child. After her arrest, her husband, Simon Nguru, took custody of the four children.



17. The accused is not viewed as a threat to the community and is not likely to be harmed by members of the public should he be released. Her brother in law and his wife are agreeable to her being released from prison. The victim was a young mother of two children. Her husband is still grieving her death objected to the accused being released to the community. He demands to be compensated for his loss.
18. As already indicated, the Probation Report recommended the accused for a non-custodial sentence and be accorded guidance and counselling in anger management. Also, she will be assisted to reunite with her children.
19. The applicable law on sentence for the offence of manslaughter is found under the provisions of Section 205 of the *Penal Code* which provides for the maximum sentence of life imprisonment as follows:

‘Any person who commits the felony of manslaughter is liable to imprisonment for life’

20. In addition, the Prisons Officer at Embu Women’s Prison filed a report on the accused to which were attached testimonials. The report is positive and seeks that the accused be accorded any assistance.
21. This this court has taken into consideration the aggravating circumstances. The convict killed the victim in a drunken brawl by hitting her with a beer bottle causing blunt trauma in the head, and cuts and bruises to both the head and arms. The deceased died whilst undergoing treatment in hospital.
22. The supreme Court decision in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR provides that the mitigating circumstances to be considered before sentencing are as follows:

“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.”

23. I have taken into consideration the mitigation of the accused, the probation officers report, the above sentencing guidelines, and the Prisons report. I also note that the accused has been in remand custody since 19th October 2020.

Disposition

24. Taking all these factors into consideration, the accused satisfies the criteria for a reduced sentence from the maximum sentence of life imprisonment.



25. Accordingly, I sentence the accused to 10 years imprisonment to be made out as follows:
- a. The accused is entitled under the *Prisons Act* to remission of 1/3 of her sentence. This leaves a balance of 6 years and 8 months to be served;
 - b. Of this, the accused has served three (3) years which leaves a balance of 3 years and 8 months.
 - c. The accused shall serve 8 months in prison; thereafter, the balance of 3 years shall be served as a non-custodial sentence during which she shall:
 - i. Be engaged in a community service programme designed and facilitated by the Probation Officer;
 - ii. She shall be engaged in a programme of counselling on, amongst others, anger management, good community living and shall be helped to reintegrate into the community.
 - d. Should the accused fall afoul of the law and be convicted of any offence during any part of her sentence, the accused shall be arrested and brought before the court for review of the present sentence.
26. Orders accordingly.

DATED AT KERUGOYA THIS 28TH DAY OF NOVEMBER, 2023

R MWONGO JUDGE

Delivered in the presence of:

1. Purity Jerusa the Accused in Person
2. Kiragu for the Accused
3. Maari for the Republic
4. Murage, Court Assistant

