



**Macharia v Republic (Criminal Case E006 of 2021)
[2023] KEHC 26441 (KLR) (27 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 26441 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E006 OF 2021
DO CHEPKWONY, J
NOVEMBER 27, 2023**

BETWEEN

BONFACE WANJOHI MACHARIA ACCUSED

AND

REPUBLIC RESPONDENT

RULING

1. The accused, Bonface Wanjohi Macharia, was initially charged with the offence of Murder contrary to section 203 as read with section 204 of the [Penal Code](#).

The particulars of the offence are that:-

“ On the 4th July, 2020 at around 12.00hours at Kariua Village in Gatundu North Sub County within Kiambu county murdered Esther Njeri Nganga.

2. The accused was certified fit to plead after a mental assessment was conducted on her by a Psychiatrist, Dr. Linet Kendi on 4th February, 2021. And on 11th February, 2021, the accused person pleaded ‘Not Guilty’ to the offence of murder.
3. Later, the parties pursued a Plea Bargain Agreement which was filed in court on 14th July, 2023. The accused was then charged with a lesser offence of Manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#), to which he pleaded guilty.
4. M/S Ngesa, counsel for the State/prosecution informed court that on 4th July, 2020, Anne Muthoni, mother to the accused and daughter to the deceased prepared the deceased who is elderly and locked her in her house. And as she normally would do, left the key in a hiding place. That after a short while, one Hannah Wambui Nganga, a daughter in law to the deceased heard the deceased calling out for help as she was passing by her house. She went to the door to the deceased’s and found it locked from inside but could hear the deceased groaning in pain. She called for support from other family members who



- came and they broke into the house to gain entry. When they entered the house, the deceased informed them that she had been raped by the accused and they then heard him say that he was resting in this house. The accused was pushed outside this house where he was attacked by the mob and beaten before being rescued by police officers from Kiamwangi Police Station and taken to hospital.
5. The deceased was taken to Igegani District Hospital where a Post Referral Care form was filed and X-ray conducted on her, which confirmed a fracture on her left leg. She was referred to Thika Level Five Hospital where further tests were conducted and it was established that she had suffered an inter femur fracture and leg was plastered. The deceased was taken back home for home-care but health deteriorated. She was taken to Kenyatta National Hospital but passed on after sometime.
 6. A post mortem examination was conducted on the deceased's body and according to the Pathologist, the cause of death was found to be sepsis due to open compound fracture on the left femur (PEXhibit -1).
 7. The accused person confirmed the facts as presented by the prosecution and he was convicted on his own plea of guilt.
 8. In mitigation, Mr. Marube, counsel for the accused is very remorseful and could not understand why he did what he did. It is also submitted that now that he is sober, he apologises to family members and what is, and will always linger on his mind is that he caused his grandmother's death. According to counsel for the accused, the accused had pleaded guilty to the lesser charge of Manslaughter as so has to bring a closure for himself and her family by expediting the trial. Counsel has also pointed out that the accused has been in custody for there (3) years during which period he has shown signs of rehabilitation. He produced copies of certificates of what he has achieved being a Certificate on the Prisoner's Journey completed on 17th June, 2021, a Certificate from Emmaus Bible School, a Correspondence Course in Bible Study completed on 30th November, 2021 and was awarded a Diploma, Certificate of Completion at Silver and Gold Level and another in Peer Counselling and communication School. Counsel for the accused person has urged this court to consider the accused persons age of 30 years, remorsefulness and aptitude to rehabilitate and tamper justice and mercy and accord him a chance to demonstrate his usefulness to society.
 9. Counsel for the prosecution, M/S Ngesa, while submitting that she did not have any previous criminal records on the accused submitted that the court should consider that gravity of the offence of Manslaughter, which is a felony and the fact that it was committed against a victim aged 95 years old who was grandmother to the accused person. She also invited this court to consider the severe suffering that deceased underwent for the last three (3) months of her life because of the injuries occasioned on her by the accused who is her own grandson through an ordeal of rape. Counsel has urged that even though documents have been produced before the court on the conduct of the accused in the same should be noted that this is after the commission of the heinous act which should not be used to exonerate the accused from the crime he committed. That they are only beneficial to him now.
 10. The matter was referred to the Probation and After-Care Services Department for a social inquiry to be conducted on the accused person. A pre-bail report was filed in court on 16th September, 2023 wherein it was recommended that the accused person's incarceration in the remand home has made him realise his mistakes and made him change positively by granting every opportunity in remand at his disposal. It was pointed out that he has undergone various training which leave towards Christianity and counselling skills which have made him realise his addiction to alcohol was only mental slavery. According to the Probation Officer, the family of the accused (offender) have forgiven him, while confessing that he had a cordial relationship with his grandmother, who he had always taken care of. According to the Probation Officer, since the accused was highly remorseful for the offence, for a



second chance and had a supportive family who were ready to walk with him, alongside being equipped to deal with life outside the prison by utilizing the skills he had attained in prison.

11. In determining the sentence to mete against the accused, I have taken into consideration the offence he is charged with, the circumstances under which the offence was committed in that with the accused's mitigation, records, past records and recommendation by the Probation Officer and the fact that he pleaded guilty to the lesser charge of Manslaughter.
12. It is not lost to the court that the offence of Manslaughter is defined under section 202 of the [Penal Code](#) as follows:-
202
(1) "Any person who by an unlawful act or omission caused the death of another person is guilty of the felony termed Manslaughter".
13. The punishment for the offence of Manslaughter is prescribed under Section 205 of the [Penal Code](#) which states:-
"205 Any person who commits the felony of Manslaughter is liable to imprisonment for life".
14. Although the law has prescribed the sentence to life imprisonment for the offence of Manslaughter, in exercise of promoting the principles of sentencing and rehabilitation, the court has discretion to mete out a lesser sentence.
15. The court has considered the facts and circumstances of the case and condemns the heinous offence which was done by a grandchild to an elderly grandmother leading to her death. The court agrees with the prosecution counsel that although the accused has acquired numerous skills and certificates while in prison they do exonerate him from the offence.
16. The court notes from the accused person's mitigation and recommendation by the family of the accused which is also the family of the deceased (as this was a case of relatives) were willing to accept him back to the society as his child and that the accused is remorseful. However, it is worth-noting that what the accused person did is to fathom in the African Culture even if he was drunk, this court finds there is need to balance out justice for the deceased person whose last year or months were full of pain and an embarrassment for the family. It is the considered view that a sentence of fifteen (15) years custodial sentence is appropriate for the accused.
17. However, in light of section 333(2) of the [Criminal Procedure Code](#), the period the accused spent in custody during trial ought to be considered. In this case, the accused person has been in prison since 9th February, 2021, when he was arraigned. In view of this, the court hereby directs that the period the accused has spent in custody during the pendency of the trial be considered and be deducted from the term of fifteen (15) years.
18. The accused person is thus sentenced to serve fifteen (15) years imprisonment, less the period spent in custody since 9th February, 2021.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 27TH DAY OF NOVEMBER, 2023.

D. O. CHEPKWONY



JUDGE

In the presence of:

M/S Ngesa counsel for the State

Mr. Maruhe counsel for accused

