



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Muyanga (Criminal Case 5 of 2020)
[2023] KEHC 26446 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 26446 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 5 OF 2020
DO CHEPKWONY, J
NOVEMBER 23, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

ANNASTACIA MUMBE MUYANGA ACCUSED

RULING

1. The Accused, Annastacia Mumbe Muyanga 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 were that:-

“On the 8th day of February, 2020 at around 10.15hours at Munyu area in Thika East Sub-County within Kiambu County, the accused unlawfully killed Dennis Wairungi”.

2. The accused was certified fit to plead after a mental assessment was conducted on her by a Psychiatrist, Dr. Mumbi Chege on 24th February, 2020. And on 3rd March, 2020, the accused pleaded “Not Guilty” to the offence of murder.
3. Later, the parties pursued a plea bargain agreement and the accused pleaded ‘Guilty’ to a lesser offence of Manslaughter contrary to Section 202 of the [Penal Code](#) whereby the facts of the case were read to her and on confirming the same to be true, the accused was convicted on her own ‘plea of guilt’.
4. M/S Ngesa, counsel for the State informed court that the prosecution did not have any previous records on the accused and urged that she be treated as a first offender.
5. Accused person’s grandmother wished to address court. And there being no objection to the request by the defence, Lucy Waithera Warunge, grandmother to the accused was put to the stand where she expressed the love she had for the deceased, who even though was her daughter’s son, was like her own



son as he had brought him up since he was two (2) years old, educated him upto college and was still staying with him at the time of his demise. According to the deceased's grandmother, his death had affected her and she was seeking for justice to be done in this case.

6. Mr. Olaka, counsel for the accused pleaded with court that before he could mitigate on behalf of the accused person, the accused be allowed to say something as the decision that the court was going to render would affect her.
7. The accused in mitigation thanked court for released her on bond and asked for forgiveness from the family of the deceased. She told court that there is not time she failed to attend court from the two (2) years she was out on bond and neither did he commit any offence. She went on to tell court that she was a single mother of a child who is now in standard one (1) who she is responsible for paying his school fees and upkeep.
8. Further, she states that her family depends on her for their upkeep since her father is a casual labourer. For instance, her two young siblings 5 and 6 years respectively, depend on her for school fees. Her mother who suffers from high blood pressure, diabetes and kidney complications and hence depends on her for her medication. The accused contends that while in custody, she has trained on "safari ya mfungwa" programme where I have attained a certificate in anger management and counselling and believes she has reformed. She urged the court to have mercy on her and give her a second chance by considering her for a non-custodial sentence.
9. In addition to her mitigation, her counsel, Mr. Olaka told court that the accused has pleaded guilty to a lesser charge of Manslaughter contrary to Section 202 of the *Penal Code*, which shows that her demeanor has deflated and she is a broken person.
10. Mr. Olaka has urged court to exercise mercy upon the accused since she is broken, has pleaded for mercy and regrets the events that have come to pass. He cited Section 35 of the Penal Code which gives court the discretion of discharging the accused person, with a rider that he/she does not commit an offence within 12 months and does not specify which offence the Section applies to.
11. He has further urged court to extend the provisions under Article 50(2) (p) of the *Constitution* which provides for the right to fair hearing to include to the least punishment of the offence. He invited the court to consider the age of the accused, being 28 years old and her status as a single mother of one child; who needs love, care and affection of her mother. According to Mr. Olaka, the only way this child can be assured of motherly love, care and protection is by granting the accused non-custodial sentence.
12. Finally, counsel for the accused contends that by pleading to a lesser charge of Manslaughter, the accused has saved court time and resources so they can be allocated to other matters and thus deserves non-custodial sentence. He cited the case of *L. K. E. v Republic* [2021]eKLR, C. Case No 30 of 2020 and Chapter 8:6-11 of the book of Luke in the Bible.
13. The court called for a social inquiry to be conducted on the accused and a pre-sentence report filed in court and the same was duly filed on 27th July, 2023. According to that report, an inquiry was conducted from the accused person's family members for background and or history and attitude towards accused; the victim's family for who the deceased was, and the community from who the deceased and accused are. The Probation Officer concluded that by capturing the feelings of both families of the deceased and the accused, she recommended that considering the nature of the offence, the court should consider the fact that the offender is a woman with parental responsibility and sentiments of all the parties who were interviewed and make the best and informed decision in the matter.



14. I have also taken into consideration of the circumstances of the case. It is alleged that the accused was operating a bar at Munyu Trading Centre where the deceased Dennis Waruinge together with his friend David Hungu Kariuki had gone for a drink on the fateful night and at 11.00pm, she asked the customers to get out so she could close for the day but a scuffle erupted outside the bar between the deceased and another by the name Karongo over a claim that the deceased had damaged his motorcycle's side mirror. The two were separated and on calming down, deceased went to where the accused was standing at the door of her metal house next to the bar and demanded that she opens the bar and sell him alcohol, which she declined. That as she was closing the door, the accused pulled it in the opposite direction and punched the accused on her face with a fist and she reached out for a knife in her house which she stabbed the deceased with on the right side of his chest and locked herself inside. Dr. John Mathenge who conducted the post mortem examination on the body of the deceased concluded that the cause of deceased's death was chest injury due to a single penetrating sharp force trauma to the chest (stab to the chest) consistent with homicide as per the post mortem examination report (PEX -8).
15. It is also worth-noting that the accused was arrested on 19th February, 2020 and remanded in custody until 17th May, 2021 when she was released on bond.
16. Having taken into consideration the circumstances under which the offence was committed, the accused person's mitigation, past records, the pre-sentence report alongside the fact that in pleading guilty to a lesser charge of Manslaughter, the accused has saved court's time and resources, the one year period she stayed in custody during the pendency of the case alongside the sentiments by the deceased's grandmother. From all these, the court finds that this is a case where there is need to balance between justice and mercy.
17. It is a clear and an undisputed fact that the deceased was a young man aged 22 years old and he lost his life at a prime age. Also, his family and moreso his grandmother had high expectation of him and his death has caused them so much pain and grief.
18. On the other hand, the accused is a 28 year old mother of a young child who still requires the love, care and protection and mentorship of his mother. It is also an undisputed fact that she has parents and siblings who depend on her for their upkeep, education and medical care. She has been depicted by the Probation Officer as having strong family support system with no previous conviction who regrets having committed the offence she has been charged with. However, in consideration of the business the accused engages in, that is running a bar, it is the court's belief that she has interacted with many drunken customers which she also admits to being due to the nature of the business. In view of this, she is expected to be familiar with how drunkards behave and hence learnt how to deal with them, that is, with a lot of restraint. This court finds that by taking a knife and stabbing the deceased, the accused acted in the extreme.
19. It is therefore this court's view that for a balance to be achieved in terms of justice and mercy, and so that there can be a reconciliation and healing between the deceased's family and the accused, a sentence that achieves deterrence and retribution should be meted against the accused.
20. In consideration of the one year period the accused stayed in custody before being released on bond, alongside the factors raised in the mitigation statements, grandmother's sentiments and pre-sentence report, the accused is sentenced to serve two (2) years imprisonment. Thereafter, upon her release, the accused remain under the supervision of a Probation Officer for a period of one (1) year on the following conditions, that:-



- a. The accused must obey the supervising Probation Officer and comply with any condition set by the Probation Department.
- b. She must be of good conduct.
- c. She must attend guidance and counselling sessions to be organized by the Probation Department.
- d. The Probation Department shall organize a reconciliation between the accused, her family and the deceased's family with the assistance of the community and church elders.
- e. The accused person's child to remain under the custody of her mother and or family.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 23RD DAY OF NOVEMBER , 2023.

D. O. CHEPKWONY

JUDGE

M/S Ngesa counsel for the State

Mr. Olaka counsel for the accused person

Accused – present

Court Assistant - Martin

