



**Republic v Mukuna (Criminal Case 14 of 2023)
[2023] KEHC 27090 (KLR) (19 December 2023) (Sentence)**

Neutral citation: [2023] KEHC 27090 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 14 OF 2023
JN KAMAU, J
DECEMBER 19, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

JUDITH IMINZA MUKUNA ACCUSED

SENTENCE

1. The Accused person was convicted 31st October 20of the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* cap 63 (Laws of Kenya) by Musyoka J who was seized of this matter on 21st July 2023. He then directed the Vihiga County Director of Probation and Aftercare Services to file a Pre-Sentence Report.
2. A Pre-Sentence of Mariam Korir Probation Officer Vihiga dated 25th October 2023 was filed on even date. The said Pre-Sentence Report indicated that the Accused person was aged twenty five (25) years of age. She dropped out of school after her Kenya Certificate of Primary Education (KCPE) exams which she did while pregnant.
3. Although all her family members related well, she blamed her step-sister for what had befallen her. She was currently working as a house help at South C, Nairobi. She lived with her one (1) year old child at Kibera while her mother stayed with the younger child at Ebuchieri.
4. She had an ongoing case for attempted murder at Vihiga Law Courts. She prayed for leniency stating that she was the sole breadwinner and that her children would suffer if she incarcerated.
5. The offender’s father prayed for leniency as she related well with them and that they did not bear any grudge against her. On the other hand, the deceased’s family was bitter and harboured great hatred, anger and resentment against her. The family had severed relationship with her family and wanted her punished as she had killed a person who struggled to do casual work to provide for the demanding needs of the family.



6. The Area Chief, Assistant Chief and Village Elder told the Probation Office that she had a normal childhood and had no criminal history. They suspected that she may have thought what she was using was love portion only for it to turn to be poison. The community was, however, against her being considered for a community based court sanction as her action had hampered her family's relationship with that of the deceased.
7. The Probation Office was not able to establish what prompted her to commit the offence. It was not persuaded that she was remorseful as she still denied having poisoned Erick Kwach Morris (hereinafter referred to as "the deceased"). She also still blamed her sister for her present predicament. It therefore urged this court to mete out a custodial sentence as she had not met the threshold of community rehabilitation.
8. In her mitigation, she asked this court to be lenient on her and to consider that she was aged twenty five (25) years, that she was the sole breadwinner of her family and that her children would suffer if she was incarcerated. She asserted that she always abided by the court's orders and attended court without fail which showed that she was a person who could be rehabilitated. She urged this court to give her a non-custodial sentence to accord her an opportunity to join her family and correct her behaviour.
9. She also asked this court to consider the period she was first arraigned in court and released on bond/ bail being 18th June 2018 and 8th October respectively as provided in section 333(2) of the [Criminal Procedure Code](#) Cap 75 (Laws of Kenya).
10. On its part, the State asked this court to look at the nature of the offence and note that a life was lost. It pointed out that she was found guilty of having killed the deceased and found to have had a case to answer.
11. Notably, sentencing is one of the most intricate aspects of trial. Indeed, a trial does not end unless a sentence has been meted out. The principle of sentencing is fairness, justice, proportionality and commitment to public safety. The main objectives of sentencing are retribution, incapacitation, deterrence, rehabilitation and reparation. The Sentencing Policy Guidelines in Kenya have added community protection and denunciation as sentencing objectives. The objectives are not mutually exclusive and can overlap.
12. It was important that the sentence communicate to the community, condemnation of his criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence.
13. The sentence also had to be one that was hinged on retributive justice for the secondary victims.
14. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of his offence at the time of sentencing him, chances of the Accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
15. Although the Accused person had never been charged with any offence prior to the incident, she cut short the deceased's life through poisoning. She cooked for him and left and he together with his friend ate the poisoned food. Traces of pesticide were found in the food and the cooking utensils. It was not clear what caused her to poison him making it difficult to establish whether or not the death was a misadventure as she still denied having caused his death. Justice not only needed to be done but it had to be seen to be done.
16. In view of the Pre-Sentence Report which was negative, this court took the view that a non-custodial sentence was not suitable herein. Having considered the facts of this case, and the Accused person's



mitigation and bearing in mind that she was aged twenty (20) years at the time of the incident when she may not have been blind to the consequences of her actions, this court to the firm conclusion that a sentence of twelve (12) years would be suitable and adequate herein.

Disposition

17. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to twelve (12) years imprisonment to run from today. The period she spent in custody from when she was first arraigned in court on June 18, 2018 to October 8, 2018 when she was released on bail/bond be and from December 14, 2023 and December 18, 2023 when her bail/bond was cancelled be and is hereby taken into account while computing her sentence in line with section 333(2) of the *Criminal Procedure Code* cap 75 (Laws of Kenya).
18. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 19TH DAY OF DECEMBER 2023

J. KAMAU

JUDGE

