



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NUMBER E006 OF 2021

REPUBLIC.....ODPP

VERSUS

REUBEN KIPKURUI alias WESLEY AREA.....ACCUSED

SENTENCE - RULING

1. The accused Reuben Kipkurui alias Wesley Area was charged with **Murder Contrary to Section 203 as read with Section 204 of the Penal Code.**
2. He pleaded not guilty on 20th January 2021.
3. On 2nd March 2022 the ODPP and the accused entered into a Plea Agreement pursuant to **Section 137A of the Criminal Procedure Code.**

“137A. Plea agreement negotiation

(1) Subject to section 137B, a prosecutor and an accused person or his representative may negotiate and enter into an agreement in respect of—

(a) reduction of a charge to a lesser included offence;

(b) withdrawal of the charge or a stay of other charges or the promise not to proceed with other possible charges.”

4. The charge of Murder was reduced to **Manslaughter Contrary to Section 202 as read with 205 of the Penal Code;**

“Manslaughter

(1) Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter.

(2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.

205. Punishment of manslaughter

Any person who commits the felony of manslaughter is liable to imprisonment for life.”

5. The plea was recorded as per **Section 137F of the Criminal Procedure Code.** The accused confirmed that he entered into the plea voluntarily. The facts were set out as follows;

“That on 27th November 2020 the accused Reuben Kipkurui Mutai alias Wesley Area and the deceased Naomi Chebet were given work by Caroline Cherotich to weed his farm the next day the 28th November 2020. The entire work was agreed was worthy KShs. 1000/= and the same was to be paid to the deceased’s phone so that they can share equally.

On the 28th November 2020 while the two were weeding the potatoes, PW1 Abigale the daughter to the deceased saw the accused hitting the deceased with his jembe twice on the head. He also took the panga and ran in the maize plantation nearby where he slit his throat in an attempt to commit suicide. Fortunately he raised a groaning sound and the people who had gathered at the scene heard him. They rushed him to the hospital and he was treated. Later it was PW8 Kiprono Cheruiyot who explained that the two had a misunderstanding on how to share the Kshs. 1000 which had been sent to the deceased. That the deceased received Kshs. 1000/- and he sent Kshs. 200/= to PW2 whom the accused had requested to receive his share from the deceased.

While in the farm the two could not agree on how they should share the money, the accused got angry when he was told he was only given Kshs. 200/= out of the Kshs. 1000/= for the work, he hit the deceased who died instantly. Police from Keringet visited the scene and took the body to Olunguruone morgue as the accused was rushed to hospital.

Post mortem was later conducted and the cause of death was severe head injury due to blunt force trauma on the head. The accused was discharged from PGH after one month of treatment and he was arraigned in court on information of murder where he pleaded not guilty.”

6. The accused pleaded guilty to the facts of the case and was convicted accordingly.
7. The state proposed a term of twenty (20) years imprisonment, the accused proposed three (3) years non-custodial sentence.
8. In mitigation Ms. Githae submitted for the accused;

“On behalf of the accused person, he is remorseful for what transpired on that day. He pleads for leniency in sentencing him. He states that he was drunk and they just had minor disagreement with the deceased, what transpired thereafter was a shock to him, he rushed to nearby farm to commit suicide because he could not come to terms with what happened.

He is father of 2 children, including the 2 they were taking care with deceased. All the children are in school, no parent to cater for their needs.

The accused has health complications. He was in a Road Traffic Accident in 2019, has metal implant on his right leg, plastic implant right wrist, I saw that when I visited him in prison. He is suffering in remand, needs constant medical attention which is not available in Remand.

He is first time offender, no previous records, pleads for 3 years non-custodial sentence. He is more than willing to comply with all the terms the court will issue and the Probation Order.”

9. I sought for a pre-sentence report to assist the court to arrive at an appropriate sentence. The Probation Officer after setting out the accused person’s background simply states at the conclusion;

“Three (3) Years’ Probation Sentence recommended.”

There is no indication at all of what this Probation Supervision will entail.

10. Having pointed that out, the issue is what sentence is suitable to the accused person in the circumstances of this case.
11. In mitigation it was stated that the accused is a sickly person, but what comes out of this he suffered injuries in a Road Traffic Accident in 2019. From the facts of the case, admitted by the accused he was doing manual work out there of weeding. He was engaged in excessive consumption of alcohol as well. Hence the fact of having implants in his body would not give him the label of being a sickly person.
12. The aggravating nature of the offence is seen in the fact the family and the community are not ready to receive him. It is also noteworthy that he concedes it was a minor disagreement. There was no evidence of provocation.
13. The allegations of suicidal tendencies in general as made in the report are not substantiated except that the accused person, upon committing the offence tried to kill himself as well. This was upon realization that he had done the unthinkable. It could also be a sign of remorse, and an attempt to punish himself. He will definitely require counselling.
14. The circumstances of the offence are such that the accused person, through a first offender killed an innocent woman, denying her children their mother. Accused is a first offender, despite the mitigating factors, the offence is serious, he was not provoked by the deceased.
15. A non-custodial sentence is therefore not suitable in the circumstances.
16. With respect to the custodial sentence what would be the appropriate sentence? I find from the authorities on record that the period of 8 years is generally acceptable.
17. The accused is sentenced to eight (8) years’ imprisonment from the date he was first remanded. During his incarceration, the in charge prison to ensure that he gets the counselling that he requires.

18. Orders Accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31ST DAY OF MARCH, 2022

MUMBUA T MATHEKA

JUDGE

In the presence of:

C/A Edna

For state: Mr Kihara

For Accused: Ms Githae N/A

Accused Present