



REPUBLIC OF KENYA



KENYA LAW
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**State v Wamwea (Criminal Case E021 of 2022)
[2022] KEHC 11669 (KLR) (31 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11669 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE E021 OF 2022
RB NGETICH, J
MAY 31, 2022**

BETWEEN

STATE PROSECUTION

AND

LAYMAN WAMWEA ACCUSED

RULING

1. The accused person herein Layman Wamwea was charged with the offence of Murder Contrary to section 203 as read with section 204 of the *Penal Code*. Particulars of the information dated April 21, 2021 are that on the March 27, 2021, at Rironi area in Limuru Sub-county, within Kiambu County murdered one Kevin Mburu Muthumbi.
2. The charge and its full particulars were read to the accused on April 22, 2021. He pleaded not guilty to the charge of Murder. On the 7th of June 2021, the state counsel did not oppose bond and the accused was released on a personal bond of Kshs. 500,000/= and one surety of a similar amount.
3. Counsel for the accused sought to have a plea bargain with the State and a plea bargain agreement dated February 8, 2022 was reached.
4. On March 10, 2022, when the accused appeared before this court, the court explained to the accused the plea bargain agreement. The charge of Manslaughter Contrary to section 202 as read together with section 205 of the *Penal Code* and its full particulars were read to the accused person in Kiswahili Language. The accused pleaded guilty to the charge. Facts were read out and the exhibits produced namely, rungu and post mortem report by Dr. Ndegwa dated March 30, 2021 were produced and marked exhibit 1 and 2 respectively.
5. The accused person admitted the facts as correct and this court convicted him on his own plea of guilty, after satisfying itself that the facts disclosed an offence of Manslaughter.



6. The Prosecution stated that the accused may be treated as a first offender as there were no previous records.
7. The court allowed Ms. Kyalo to mitigate on behalf of the accused person. In mitigation, counsel submitted that the accused had no intention to commit the offence of Manslaughter and the accused was remorseful for his actions and the accused has apologized to the family of the deceased.
8. A victim impact statement was filed on May 30, 2022 as per the court's direction. The report filed favors the accused. It recommends a community based sentence on the accused. The report indicates the victim family has forgiven the accused person and also plead for his leniency by the court.

Analysis and Determination

9. Under section 205 of the *Penal Code* a person convicted of Manslaughter is liable to imprisonment for life. Record show that the accused was attempting to prevent the deceased from torching his house. In his defence, the accused stated that he hit the deceased when he was about to torch his house.
10. In mitigation defence counsel Ms. Kyalo submitted that the accused is a first offender and he is a relative of the deceased; that he is remorseful of his actions and losing a loved one is in itself a punishment on the accused.
11. I have also perused the presentence report and note that the accused and the victims family are close relatives; they are cousins by virtue of their mothers being sisters. The report indicate that the accused is a calm person who respects all people. From the report, the accused was provoked by the deceased who threatened to burn accused's house and he tried to make good his threats, the accused hit him inflicting injuries which led to his death. Report indicate that the accused is an orphan and a single man aged 45 years old. The local administration gave good report of the accused describing him as non-violent person who has not been in conflict with the law.
12. The victims's mother who is a sister to the accused's mother indicate that he has since forgiven the accused and that she is in agreement with the step they took of sorting out the case as a family and urged the court to impose a lenient sentence.
13. In view of the above, mitigating factors by the accused through his lawyer and considering the circumstances surrounding this case and bearing in mind the fact that the the accused has saved the court's time and resources by pleading guilty to the charge of Manslaughter, a non-custodial sentence would be appropriate in the circumstances.
14. Final Orders:-
 1. The accused is convicted of the offence of Manslaughter Contrary to section 202 as read with section 205 of the *Penal Code*.
 2. Accused is placed on probation for a period of 3 years.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 31ST DAY OF MAY, 2022

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RACHEL NGETICH
JUDGE

In the presence of:



Kinyua - Court Clerk
Ms. Kyalo for Accused
Accused – Present

