



**Republic v Wachira (Criminal Case 7 of 2020)
[2022] KEHC 11117 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 11117 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE 7 OF 2020
GWN MACHARIA, J
MAY 26, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

PETER MAINA WACHIRA ACCUSED

JUDGMENT

1. The Accused, Peter Maina Wachira was initially charged with the offence of Murder contrary to Section 203 as read with 204 of the [Penal Code](#). The Particulars of which were that on the 05/02/2020 at Kihoto Estate in Naivasha sub-county within Nakuru County murdered Jane Waruguru Wambui.
2. A Plea Bargaining Agreement dated 19th January, 2022 and received into court on 24th January, 2022 between the Accused and the Republic is present in the court file. The Plea Bargaining Agreement was made pursuant to Section 137A-O of the [Criminal Procedure Code](#). By it, the Accused agreed to plead guilty to a lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#). The Agreement was witnessed by the Advocate for the Accused and the Office of Director of Public Prosecutions on behalf of the State.
3. The Accused now faces the charge of manslaughter contrary to Section 202 as read with 205 of the [Penal Code](#), the particulars being that on the 5th February, 2020 at Kihoto Estate in Naivasha Sub-County within Nakuru County killed Jane Waruguru Wambui.
4. The Accused accordingly pleaded guilty to the charge. He offered mitigation in the form of undated written submissions written by his counsel, Mr. Waigwa Ngunjiri received into court on the 17/02/2022.
5. The Accused prays for leniency on the following grounds:



- a. The accused person has pleaded guilty voluntarily, willing and freely. He has by doing so saved court from the motions of a lengthy trial and saved courts precious judicial time.
 - b. The accused person is age 44 years (a youth) has reformed in prison and his energy if applied positively is of much use to nation building.
 - c. The accused person were both drunk when they fought thus were under the influence of alcohol.
 - d. Both families that of the deceased have reached a negotiated settlement where the deceased family has been compensated by way of payment of Kshs.50,000/= which has been accepted as full and final settlement upon which payment the residents of Kihoto Village are willing to accept the accused back to the society.
 - e. The cause of the death of the deceased was not premeditated but out of alcoholism by both the deceased and the accused.
 - f. The accused is remorseful, regrets loss of his wife with whom they lived together and attributes the loss to alcoholism.
 - g. According to the presentence report the accused family is willing to accord the accused person psycho-social support in resetting including relocating him to a safer place of residence.
 - h. The local community at his parent's home is ready and willing to absorb him back to the society.
 - i. The accused person has been in remand for over two years, he has reformed from even alcoholism. We pray that he be accorded a 2nd chance in life by imposing a non custodial sentence.
 - j. There is confirmation from prison according to pre-sentence report that accused has fully reformed.
6. The Accused at the time of the commission of the offence was 42 years old and the first born of his family of origin. He had stayed with the deceased for two years as husband and wife respectively though no customary negotiations or formal union had been solemnized between them. While they lived together, they practiced crop and animal husbandry on their quarter acre piece of land where also the Accused's mother operates a small kiosk. The Accused suffered from alcoholism and had no previous criminal record. He eked out a living as a power saw operator and worked with a timber miller in Naivasha for close to four years. His wife (deceased) too was alcoholic and due to this, fights between the two were common. Both the Accused's and Victim's families attended the burial of the deceased and were on talking terms.
 7. The Accused has five siblings and the family has no history of crime. The psychiatric report indicated that he was of sound mental health though he suffered from alcoholism.
 8. A Probation Officer's Report was filed on 7th February, 2002. It confirms that the Accused suffers alcoholism and smoked tobacco. That he was co-habiting with the deceased who was also an alcoholic. That on the night of 5th February, 2020 he arrived home at around midnight and picked a quarrel with the deceased over Kshs.1000/- he had given her and inflicted an injury to her head. He brought her pain killers but she remained lying on the couch when in the morning he tried to get her up only to realize that she had passed on. He did not disclose to anyone what happened. Instead, he carried the body to a nearby bush and bought petrol and burned the body which was discovered by community members.



9. The deceased's family made an agreement with the family of the offender on 29th September, 2020 with compensation of Ksh. 50,000// given to the Victim's family and the latter committed to have forgiven the Accused. The Agreement was filed in court.
10. As regards the views of the community, it is that the Accused may not be safe once released. This is premised on the manner in which the deceased's body was recovered and the state in which it was found. It is suggested that the Accused relocates to Nyahururu at his parents' home where it would be safer for him.
11. His immediate family pleaded for a non-custodial sentence and echoed that the two families had reconciled and an agreement on compensation signed. The family has committed to ensure that the Accused abides by the terms of the sentence the court shall give.

Analysis and determination.

12. The accused is demonstrated as being remorseful as a result of which he readily pleaded guilty to manslaughter. The offence was not premeditated as both were intoxicated and a fight ensued which led to the fatal injury to the deceased. Both families having entered into an agreement for compensation is a testimony that the offender has been pardoned. His family too is willing to offer him through psycho-social support as well as relocate him. In view therefore, a lenient sentence other than the maximum provided under the law is deserved. The Probation Officer's Report suggests a maximum of a three year-probation supervision period.
13. Under Section 205 of the *Penal Code*, manslaughter carries a maximum sentence of life imprisonment. This is, however, the maximum penalty that is ordinarily reserved for the most serious of such situations. This does not, in my opinion, fall into the category of the most extreme examples of manslaughter. The State has stated that the accused is a first-time offender.
14. Since the Judiciary Sentencing Policy Guidelines are silent on the course to pursue in manslaughter cases, I resort to judicial pronouncement in my rendering of this opinion. For a charge of Manslaughter, a sentence of ten years in jail was meted out by the Court of Appeal in Mombasa Criminal Appeal 118 of 2014 *VMK v Republic* [2015] eKLR.
15. When a dangerous weapon was used in the commission of the crime, courts are more likely to sentence the offender to life in prison. There is no proof that the Accused herein utilized such a weapon in this case. As per the holding in *R v. Fearon* [1996] 2 Cr. App. R (S) 25 CA) when a judge considers that a plea of guilty has been entered, it's critical that the Accused states so unequivocally. In this particular case the Accused has pleaded guilty and the plea was unequivocal. The fact that the Accused pleaded guilty is a factor that should mitigate a more lenient sentence as he has saved the court's time that would have spent in a trial.
16. In the case of Kajiado Criminal Case No 22 of 2015 *Republic v Daniel Okello Rapuch* [2017] eKLR, a sentence of 12 months imprisonment was meted out on a man who killed another on the allegation of being involved in an illicit love affair with his girlfriend. In Kajiado Criminal Case No 4 of 2016 *Republic v Ismail Hussein Ibrahim* [2018] eKLR, the court acquitted the accused in lieu of having him charged of a lesser offence of manslaughter for he was acting in self defence.
17. In Machakos Criminal (Manslaughter) Case 21 of 2017 *Republic v Juliana Wanza Mulei* [2020] eKLR a case with similar facts as with the instant case before this court it was revealed that the accused and deceased had some tumultuous relationship punctuated with numerous fights fueled by alcohol. The court adopted a starting point of two years' imprisonment. But applied 333(2) of the *Criminal*



Procedure Code by taking into account the period spent in the remand custody. She was set free accordingly.

18. With the two families having entered into agreement and the evidence of the same tendered into court on 29/9/2020, it appears to me that no one harbours ill will towards the other. It is not new especially for murder cases. Compensation has previously been used to assuage what would be an unpleasant situation to all parties, In Nairobi Criminal Case 86 of 2011 Republic V Mohamed Abdow Mohamed [2013] eKLR the Accused was charged with the murder of Osman Ali Abdi. The court submitted itself to the steering of Article 159(1) of the Constitution that allows Courts and Tribunals to be guided by alternative dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. The court considered the case as 'sui generis' as the parties had submitted themselves to traditional and Islamic laws which provide an avenue for reconciliation. It stressed that each of the parties was satisfied and felt adequately compensated.
19. Be that as it may, the court should discourage situations where parties are coerced to enter into compensation agreements expecting they will automatically be set free. I say so having regard to the objectives of sentencing; one of which is the denunciation which aids to communicate the community's condemnation of the criminal conduct. True, the Accused did not intend the death of the deceased, more so exhibited by the fact that he even gave her medicines thinking that she just had a headache. But upon discovering she was dead, he attempted to conceal the fact. This fact, as demonstrated by the Probation Officer's Report angered the community which is yet to come to terms with the situation. On this ground, a court must fill in the gap by ensuring that the community feels that justice has been done.
20. In the foregoing, I hereby sentence the Accused person to serve four (4) years imprisonment. He has been in 9th February, 2020 which to date translates into a period of two years three months and 17 days. This period shall be taken to constitute part of the sentence pursuant to Section 333(2) of the Criminal Procedure Code any remission to be given notwithstanding.
21. It is so ordered.

DATED AND DELIVERED AT NAIVASHA THIS 26TH MAY, 2022.

G.W.NGENYE-MACHARIA

JUDGE

In the presence of:

Mr. Ngunjiri for the Accused.

Ms. Serling for the Republic.

