



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Magiti (Criminal Case 12 of 2016)
[2022] KEHC 10706 (KLR) (23 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 10706 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 12 OF 2016
RM MWONGO, J
MAY 23, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

ERASTUS NJERU MAGITI ACCUSED

JUDGMENT

1. The accused was first arraigned in court on 8th July, 2016, on charges of murder contrary to section 203 as read with section 205 of the *Penal Code*. The particulars of the offence are that on 19th June, 2016 at around 10 pm at Ngurubani township, in Mwea sub county within Kirinyaga County, the accused person, unlawfully killed Mercy Wanjiru Gikunju.
2. His plea of not guilty was entered on 18th July, 2016, and the trial commenced, with the state lining up nine witnesses. PW1 testified on 3/10/2016, then the matter stalled for reasons not explained in the record. The accused was in remand all the while.
3. On 25/11/2019, the defence counsel, Ms Magara, stated that the accused was willing to enter into a plea bargaining arrangement. Nothing resulted from that offer, until plea bargaining discussions were again revived on 8/11/2021. The prosecution finally acceded to the plea bargain, which resulted in the filing of a plea bargaining agreement on 7th March 2022.
4. By the agreement signed between the parties, the accused conceded to a fresh charge of manslaughter, in substitution for the information on murder dated 8th July, 2016. The fresh Information for Manslaughter is dated 1st March, 2022 signed by Mr. Mamba, Prosecution Counsel, and the accused. The offence of Manslaughter is charged contrary to section 202 as read with section 205 of the Penal Code.
5. In accordance with the Court's directions, a Prison's Service report and a Probation Officer's Pre-sentence Report were filed on 23rd and 30th March respectively. The court noted that the Plea Bargain



Agreement having been signed and filed on 1st March, 2022, all that remained was mitigation for sentencing purpose.

6. In her mitigation on behalf of the accused, counsel stated that there were no previous records on the accused hence he could be treated as a first offender. She indicated that the accused was remorseful and sought for a lenient sentence. His father had died and he was the only one providing for his mother and child. He had reformed completely and was willing to be integrated with the community. He prayed for the court to consider the 6 years he had spent in custody.
7. I have carefully perused the Probation Officer's pre-sentence report. It indicates that the accused confessed that he killed the deceased who he lived with as his wife. The killing was not premeditated, but the accused was under the influence of alcohol on the fateful day.
8. From the report, they lived together as husband and wife. The victim and the accused had a child together, who is currently in the custody of the victim's parent. Though still grieving the loss of their daughter, the victim's family have no bitter feelings towards the accused. They did not object to his release though they demand child support as they are unable to meet the child's basic needs due to poverty.
9. According to the report, the local community informed the probation officer that the accused was a person of good conduct prior to his arrest; that he was a sociable person who had no criminal tendencies. They had no objection to his release.
10. It was observed by the Probation Officer that the accused he had no record of misconduct; that he had never contravened prison rules; that he has a place of abode, and his chances of absconding without trace were reasonably low; that he will relocate to Nyeri from Mwea, where he will live with his mother; that he was a not viewed as a threat to the community.
11. The Probation Officer ultimately recommends the accused for a non-custodial sentence, and therefore a Probation Order, during which period he will benefit from counselling services in conflict resolution, anger management, drug and substance abuse. In addition, there will be efforts to facilitate reconciliation between the two families in the best interests of the child.
12. Further, the Prison Report noted that the accused had been in custody since 18th May, 2016; that he is well behaved and had never had any disciplinary incidents; that the period in remand had made him reflect on his life
13. It is the duty of this court to impose a sentence that meets the facts and circumstances of the case. This court has considered the full circumstances of the offence as contained in the plea agreement.
14. The facts agreed by the parties are as follows: that on the fateful night of 19th June 2016 when the accused, aged 28 years, killed the victim, aged 25 years, they had lived as husband and wife. The scene was at a rental house of the accused. The deceased returned to the house at around 6.30 pm and found the accused who asked her where she was coming from. She wondered why he had become hostile. He began to assault her in the house and neighbours feared to intervene as the accused had turned wild.
15. At around 10 pm, neighbours called the police who broke the door to the house and found the deceased unconscious. The police used their land cruiser and took her to Kimbimbi Hospital. She was transferred to Kerugoya Hospital and later referred to Mathari Mission Hospital Nyeri where she died.



16. The post-mortem report shows that the deceased suffered multiple injuries with extensive bruises of the back, buttocks, posterior side, both upper limbs; cuts on the upper lip with a lot of blood in the mouth, and sutured cut of the right orbital region (upper eye lid). The cause of death is indicated as:

“Severe head injury; anemia and acute renal failure”

The deceased succumbed to her injuries on 26th June 2016.

17. The court is satisfied that the accused entered into the plea agreement consciously and voluntarily. It observed him as he took oath and confirmed that he understood his rights as set out under section 137 of the CPC; and pleaded to the offence of manslaughter.

18. Section 205 of the Penal Code which is the applicable law on sentence for the offence of manslaughter provides that:

‘Any person who commits the felony of manslaughter is liable to imprisonment for life’

19. The maximum sentence is life imprisonment. There is no minimum prescribed penalty. The court has considered the fact that the accused confessed to killing the victim. However, the act was not pre-meditated and thus not intentional. Further, the accused did not try to escape and was arrested near the scene of the crime. The court has also considered: the mitigating circumstances that the accused pleaded guilty and his personal circumstances that he is remorseful; that he is a first time offender, is aged 33 years and has a one child. Further, the court notes the six (6) years he has been in remand custody.

20. The court has also taken into account the objects of sentencing as set out in the Judiciary Sentencing Guidelines and those set out by the Supreme Court in *Francis Muruatetu & another v Republic* [2017] eKLR.

21. In light of all the foregoing, this court hereby metes sentence as follows:

- a. The accused is sentenced to fourteen (14) years imprisonment, to be reckoned from the date of his first remand in custody in 2016, so as to benefit from statutory remission.
- b. The balance of the sentence term, shall be non-custodial, wherein the accused shall spend two (2) years on probation in a rehabilitation programme designed, facilitated and supervised by the Probation Officer, or on his directions, and shall include counselling, conflict resolution, anger management and issues of drug and substance abuse.
- c. The attendance of the accused at the said programme shall be recorded and the court may at any time call for the records thereof.
- d. Should the accused fall afoul of the law and be convicted, the probation herein shall automatically lapse, and the accused shall be incarcerated for the balance of the sentence term.

22. Orders accordingly.

DELIVERED AT KERUGOYA ON THIS 23RD DAY OF MAY 2022.

R MWONGO

JUDGE

Delivered in the presence of:

1. Erastus Njeru Magiti, the Accused in person



2. Ms. Magara for Accused
3. Mr. Mamba for the State
4. Mr. Murage, Court Assistant

