



**Republic v Wanyoro (Criminal Case 2 of 2019)
[2022] KEHC 15158 (KLR) (28 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 15158 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL CASE 2 OF 2019
SN MUTUKU, J
SEPTEMBER 28, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

ANNA NYAMBURA WANYORO ACCUSED

JUDGMENT

1. Anna Nyambura Wanyoro, the accused, was charged with murder contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars of this offence are that on the 23rd day of January, 2019, at Mathare Village, Ngong Location in Kajiado North Sub-county within Kajiado County murdered David Kiarie Ngugi.
2. The accused pleaded not guilty to the murder charges on the October 15, 2019. The murder trial did not take off. It seems that immediately after the plea was taken, the parties entered into a plea-bargaining process. This took a while to conclude until July 14, 2022.

Plea Agreement

3. Following the finalization and execution of the Plea Bargain Agreement, the prosecution amended the charges from murder to manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#) with particulars that on 23rd January, 2019 at Mathare Village Ngong Location in Kajiado North Sub-County within Kajiado County unlawfully killed David Kiarie Ngugi.
4. The accused pleaded guilty to the charge of manslaughter. Consequently, this court entered a plea of guilty against the accused. The prosecution presented facts of the case as follows:



Facts

The accused and David Kiarie Ngugi, the deceased, were living together as husband and wife at Mathare Village, Ngong Location. On the January 23, 2019, the accused, the body of the deceased was found inside a locked room that the accused told the police was a store. He was lying on his chest in a pool of blood with stab wounds on the lower left side of the head near the ear and on the neck.

The circumstances leading to the discovery of the body of the deceased are that the Accused went to Ngong Town to look for transport to ferry her goods from Ngong to Kawangware. She secured transport from Christopher Njoroge the driver of Motor Vehicle Registration No. KAD 906F Canter lorry. The accused had also engaged some people to remove iron sheets of the fence around her house. She told Christopher that she was selling the property since she was moving away permanently.

A neighbor and member of the slum security team, Kelvin Gitau Ndungu, had received information that the accused was selling the place and had brought an interested buyer. As the accused was negotiating the price with the buyer, Kelvin entered inside the house and saw blood stains. He asked the accused the source of the blood to which she told him that she had cut herself the previous night as she fought with her husband. Kelvin became suspicious due to the amount of blood and called Charles Kigia Wamiti, the Chairman of the Security Team, Stanley Kinyua and David Mugo Ndichu to come to the scene. They decided to escort the accused to the Ngong Police Station.

Police visited the scene and found that there was blood and drag marks leading into a room where the body of the deceased was found. Police also noticed that all household goods had been packed and that the house had been mopped but there was dilute blood on the floor. The accused was taken to the Police Station and charged with murder, now reduced to manslaughter.

The body of the deceased was taken to the City Mortuary where it was examined by Dr. Maingi on January 28, 2019. The findings showed that the cause of death was excessive blood loss due to multiple penetrating sharp trauma to the head, face and neck.

5. The accused admitted these facts are correct. Consequently, this court found her guilty of manslaughter and entered a conviction for that offence. Mitigation hearing was scheduled for July 27, 2022. This court called for a pre-sentence report from the probation office.

Mitigation

6. Mr. Kinaro, learned counsel for the accused mitigated that the accused was remorseful for her actions; that she had not pre-meditated her actions that led to the death of the deceased; that her actions were triggered by constant battering and cruel treatment by the deceased and that the deceased acted in self defence while being attacked by the deceased.
7. It was mitigated further that the accused is a first offender and that given the same circumstances, she would now walk away from an abusive relationship than pile up anger. Court was told that the accused had a 5-year-old child with the deceased and the deceased had a 17-year-old son from another relationship; that she is the sole bread winner for the family and that her mother takes care of the children.
8. Court was told that the accused has been undergoing treatment for mental problems she suffered while in Saudi Arabia. Court was that the accused has been in custody since January 2019 and that court ought to give her a chance to re-unite with her children.



9. The prosecution asked the court to take into account the loss of life due to uncontrolled anger. They asked for a deterrent sentence. The prosecution asked the court to treat the accused as a first offender.

Determination

10. I have considered this matter. The social inquiry report is detailed and gives adequate information regarding the accused person. I have considered that the accused has no previous records. This court will therefore treat her as a first offender. She is remorseful. But they say “majuto ni mjukuu”. It is too late in the day to regret. A life has already been lost and cannot be brought back. Since all the court has is the word of the accused alone, it cannot be confirmed if indeed she was acting in self defence in stabbing the deceased.
11. I have considered that the accused has been in custody since February 8, 2019 when she first appeared in court, a period of about 3 ½ years. While I consider that a probation report is not binding to this court, it however allows the court to see an accused person through the lens of others people, for instance family members, neighbours and local administration.
12. In my considered view, a mix of custodial and non-custodial sentence would be beneficial to the accused so that she can be assisted to deal with her anger issues. For this reason, taking into account the 3 ½ years she has stayed in custody, I hereby sentence the accused to serve three (3) years custodial sentence. Upon completion of that sentence, she will serve non-custodial sentence of one (1) year. While serving non-custodial sentence, she will be assisted to undergo counselling in anger management.
13. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 28TH SEPTEMBER, 2022.

S. N. MUTUKU

JUDGE

