



**Republic v Miano (Criminal Case E020 of 2022)  
[2022] KEHC 16542 (KLR) (19 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 16542 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL CASE E020 OF 2022  
RM MWONGO, J  
DECEMBER 19, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JACOBED WANJIRA MIANO ..... ACCUSED**

**JUDGMENT**

1. The accused is charged with murder contrary to section 203 as read with section 204 of the [Penal Code](#) cap 63 Laws of Kenya. The particulars are that on November 5, 2022 at 2100 hours at Karucho Village, Ngariambi sublocation, Njukiini Location, Kirinyaga East sub-county within Kirinyaga county, she murdered her husband, Matthew Njagi Muriuki.
2. When arraigned in court on November 15, 2022, the accused arrived in court holding a small baby. She pleaded not guilty and a plea of not guilty was entered. Through counsel Mr Munene, she applied for and was granted bail on terms to be concluded once a probation officers pre-bail and pre-sentencing report were availed within seven (7) days. She was ordered to avail a title the following day, to secure her bond, as she had stated that a relative would avail one. Defence counsel also indicated that the family were prepared to enter into a plea bargaining agreement (PBA), and it was ordered that they attend court the next day.
3. At the mention on November 16, 2022, counsel reported that the title holder had declined to avail the title as previously agreed, but that the deceased's family members were present and they stood up. The state indicated that it was agreeable to a PBA, and that given the facts and circumstances of the case, it was willing to fast-track the same. Directions were given for the fast tracking of the PBA, and the accused was remanded in custody with her baby at Embu women's prison.
4. At the next mention on November 23, 2022, the state reported that the terms of a PBA had been agreed upon, and the instrument signed. Due to the exigencies involving the baby in custody, counsel stated



- that they were prepared for the adoption by the court of the PBA immediately, and also for mitigation thereafter. The court also noted that a probation officer's pre-sentence report had been filed.
5. By consent, the PBA was then presented in court, the state recommending five (5) years imprisonment and the defence proposing a five (5) years non-custodial sentence. The post mortem report was also filed.
  6. The prosecution presented the facts, also set out in the PBA, which are as follows: On the material day at 7.00pm, the accused was at home when the deceased arrived and found her attending to their 6-month old baby. He demanded to know what she had done with Kshs 200/- that he had given her in the morning. She explained, and he appeared content. Then he asked her who had taken some 100/- from where he had left it. She went to check and the accused went outside. When he returned, he was holding a piece of firewood and proceeded to strike her. She instinctively blocked the blow with her hand.
  7. The accused then reached onto a table close by and picked a knife with which he attempted to stab her. The accused managed to wrestle the knife from him and stabbed at him, getting him on the neck. He stopped his attack and walked out. According to the state, they had the evidence of a neighbour (James Nderi Mwaniki) who was to be called as PW1, to the effect that PW1 heard the deceased calling him from about 60 metres away. He went out and found the deceased's shoulder oozing with blood. The deceased stated that "mundumuka" or wife, had done that to him.
  8. PW2 (Sofia Wairimu Waweru) wife to PW1 had evidence to the effect that she was with PW1 when she heard the deceased call him; that she rushed out and saw the deceased bleeding then he fainted. She called her brother and, with two others, they took the deceased to hospital where he was pronounced dead.
  9. A post mortem was later conducted by Dr Karomo, the report of which was exhibited and attached to the PBA. The Post mortem report indicates that on external examination, the deceased had a cut wound on the neck anteriorly to the level of the thyroid cartilage 3 cm long and 2 cm wide penetrating into the right side of the chest; dried blood was found on the neck, chest and legs; and no defensive marks were seen on the upper limbs. The doctor indicated the cause of death as:  

"Massive external haemorrhage after assault with a sharp object"
  10. The PBA having been signed by the parties, and the factual basis having been laid therein, the accused was placed under oath and stated that she understood all her rights set out in sec 137F(1)(a). The court form for recording a plea agreement was then signed and the court satisfied itself that the accused was competent, of sound mind and was acting voluntarily, pursuant to sec 137
  11. The court accepted and recorded the PBA pursuant to section 137F CPC, and found the accused guilty of manslaughter. As requested by the accused, her mitigation was then heard.
  12. On her behalf, counsel stated that the accused committed the offence inadvertently; that the circumstances showed that she was attacked by the accused with a knife and she overpowered the accused, grabbed the knife and stabbed him; that she was merely defending herself and would have been stabbed had she not defended herself; that the accused was not a normal criminal; that she was 28 years old and had a 6 month old baby who depended on her as the mother; that the innocent baby should not be subjected to the criminal justice system;
  13. Counsel also referred to the probation report which indicated that the accused had been a good citizen; that the administration officers in her area had given positive feedback about her; that the victim's



family had also spoken positively about her; that the report indicated that the accused's family and her own family depend partly on her as she was a hard working person.

14. Finally, counsel pointed out that the accused was a first offender, and were it not for the circumstances she was faced with on the material day, she would never have been found in contravention of the law. Counsel proposed a non-custodial sentence as that would foster reconciliation.
15. The DPP stated that the state had no information about the accused's prior offences. Out of caution however, they proposed a 5-year imprisonment term.
16. Having listened to the parties, and considered all the material placed before me, it is clear that this case was one of self-defence. The accused and the deceased had a quarrel over money and the deceased's anger led him to attack the accused, who responded in self-defence without any thought or intention of killing her husband. Had the case proceeded to full trial on the facts presented in the evidence of the proposed witnesses, the state would not have been able to prove murder. At best the state might have been able to prove manslaughter, as there appears to have been no malice aforethought on the part of the accused
17. Section 17 of the *Penal Code* provides as follows:

“Subject to any express provisions in this code or any law in operation in Kenya, criminal responsibility for the use of force in the defense of person or property shall be determined according to the principles of English common law.”
18. At common law the defence of self-defence allows a person to use reasonable force to:
  - i. Defend him or herself
  - ii. Prevent attack of another person
  - iii. Defend his or her property
19. In *Ahmed Mohammed Omar & 5 others vs. Republic* [2014] eKLR the Court of Appeal dealt with the aspect of self-defence in fair detail, stating its well settled principles as follows:

“The common law position regarding the defence of self-defense has changed over time. Prior to the decision of the House of Lords in DPP v. Morgan [1975] 2 ALL ER 347, the view was that it was an essential element of self-defense not only that the accused believed that he was being attacked or in imminent danger of being attacked but also that such belief was based on reasonable grounds. But in DPP v Morgan (supra) it was held that:

“.....if the appellant might have been labouring under mistake as to the facts, he was to be judged according to his mistaken view of facts, whether the mistake was, on an objective view, reasonable or not. The reasonableness or unreasonableness of the appellants' belief was material to the question whether the belief was held, its unreasonableness, so far as guilt or innocence was concerned, was irrelevant.”
20. Here, the accused was stated to have been in a melee with her husband, who attacked her with a knife. She wrestled the knife from him and used it against him. According to the facts laid out by the prosecution, the accused had been attending to the couple's child when the fracas broke out. Thus, she would have been both in self-protection mode whilst thinking about the safety of her child.
21. I have also taken into account the probation officer's report filed on November 22, 2022, referred to in some detail by counsel. The observations of the Probation officer are that the accused was not known



in her community to engage in detrimental behaviour; that the offence appears to have been caused by the fact that both she and her husband were drunk, and the fight was over a mere 100/-; that the families of both the accused and the deceased come from humble economic backgrounds; that the accused's father declined to stand surety for the accused; that the accused's family is willing to receive her back in her home, Kianderi; and the victim's family is unwilling to pursue the case as it is likely to wound them more.

22. The probation report recommends a non-custodial sentence of a probation order; and that the accused will:

“ ... (need) to address the) issue of alcohol intake.....(a matter) she will need guidance on...as well as reconciliation with the deceased's family because she has a child sired by the victim”

23. I have also taken into account the [Judiciary Policy and Guidelines on Sentencing](#) which provide as follows:

- 1) Retribution: To punish the offender for his/her criminal conduct in a just manner.
- 2) Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
- 3) Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.
- 4) Restorative Justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims' communities' and offenders' needs and justice demands that these are met.

Further, to promote a sense of responsibility through the offender's contribution towards meeting the victim's needs

- 5) Community Protection: To protect the community by incapacitating the offender.
- 6) Denunciation: To communicate the community's condemnation of the criminal conduct.

24. Taking all the above matters into account, I think the appropriate sentence is a four (4) year suspended imprisonment term with effect forthwith, on the following conditions:

- a. The accused shall enter into a recognisance with the officer in charge, Kerugoya police station to keep the peace;
- b. The accused shall during the said period attend a programme of at least two years of rehabilitation and counselling on drinking and reconciliation;
- c. Such programme to be designed and facilitated by the probation officer and a proper record thereof shall be maintained and the court may call for such record at any time
- d. The rehabilitation programme shall include a period of community service to be determined by the probation officer but such period shall not be less than six (6) months

25. Orders accordingly.

**DELIVERED AT KERUGOYA THIS 19<sup>TH</sup> DAY OF DECEMBER, 2022**

.....

**RICHARD MWONGO**



## **JUDGE**

In the presence of:

1. Munene for the Accused
2. Mamba for the State
3. Accused Present in Person
4. Murage, Court Assistant

