



**Republic v Ruguru (Criminal Case E030 of 2012)  
[2022] KEHC 16685 (KLR) (19 December 2022) (Sentence)**

Neutral citation: [2022] KEHC 16685 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL CASE E030 OF 2012  
RM MWONGO, J  
DECEMBER 19, 2022**

**BETWEEN**

**REPUBLIC ..... RESPONDENT**

**AND**

**JACKLINE WAWIRA RUGURU ..... ACCUSED**

**SENTENCE**

1. The accused is charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* cap 63. The particulars are that on June 27, 2021 at Ciagini Location in Mwea West Sub-county Kirinyaga County she unlawfully murdered Erick Gitonga Douglas.
2. Initially on July 22, 2021 the accused pleaded not guilty. On December 6, 2021 counsel for the defence indicated to the court that her client was willing to enter into a plea-bargaining agreement (PBA). The court allowed negotiations on plea-bargaining agreement under section 137 A (O) of the *Criminal Procedure Code*. The basis for their potential success was that the deceased has been the accused's lover, with whom they had a small baby. They had fought when the deceased attacked her and she stabbed him on self defence.
3. On October 3, 2022 the parties signed a formal plea-bargaining agreement which was concluded in court, with the parties signing the court form for recording of a plea agreement. Simultaneously, the post mortem report was admitted as evidence of the death of the deceased and the cause of death.
4. The admitted facts of the case are set out full in paragraph 8 of the plea-bargaining agreement. The essential aspects are that the accused and deceased were boyfriend and girlfriend. The deceased visited the accused at her house on June 27, 2021. He appeared drunk, and started a quarrel with the accused. A fight ensued, and the accused reached out and got a kitchen knife with which she stabbed the deceased.



5. Aghast at what she had done, the accused immediately tried calling her friend Harun Wachira Kinyua (PW1) who came and they both tried to assist the deceased to be attended at hospital. He died before he reached the hospital.
6. The court, being satisfied that the accused fully understood her rights pursuant to section 137(F) *Criminal Procedure Code*, and being satisfied that the accused was competent and acting voluntarily pursuant to section 137G *Criminal Procedure Code*, accepted plea-bargaining agreement under section 137 H.
7. The court convicted the accused of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. The court heard the accused's mitigation on December 1, 2022 having ordered the filing of probation officers pre-sentence report. The same was filed on November 20, 2022.
8. In mitigation, counsel stated that the accused was a young mother of 22 years with a baby now aged two years. The baby was in custody with her mother and this situation is not in the best interests of the child. The accused acted in self defence and truly regrets the incident. Her remorse is evidenced by her actions immediately after stabbing the accused, by trying to get him to hospital immediately. The attempt to take the deceased to hospital was unsuccessful and her boyfriend died on the way.
9. The duty of this court when meting the sentence is to ensure it takes into account all relevant factors, both mitigating and aggravating, so that the sentenced meted is proportionate to the offence committed.
10. The objects of the Judiciary Sentencing Policy.
  - 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.
11. I have also taken into account the Judiciary Sentencing Guidelines and the Supreme Court decisions in *Francis Karioko Muruatetu & another v Republic* [2021] eKLR where it was clarified that on sentencing the court should consider mitigating factors such as the following:
  - a) Age of the offender;
  - b) Being a first offender;
  - c) Whether the offender pleaded guilty;
  - d) Character and record of the offender;
  - e) Commission of the offence in response to gender-based violence;



- f) The manner in which the offence was committed on the victim;
  - g) The physical and psychological effect of the offence on the victim's family;
  - h) Remorsefulness of the offender;
  - i) The possibility of reform and social re-adaptation of the offender;
  - j) Any other factor that the court considers relevant.
12. The probation officer's pre-sentence report filed on November 20, 2022, set out home and family background of the accused and her personal history. I note that the accused's grandmother died in 2021 whilst the accused was in remand custody. The accused bore the deceased's son, Briton Waweru in April 2020; the community attitude towards the accused was positive; she was described as well behaved and lived well amongst the community. No report of victim impact was available as the deceased's family, reported to be from Meru, could not be traced and none of the family attended deceased's burial.
13. The probation report concluded as follows on the accused:
- “The accused is only 21 years old. Having become a mother at a young age, she appears not to have been able to cope with the challenges that come with it and she may need a lot of guidance. The fact that the victim was the father of her son is likely to haunt her rest of her life and she may need to be assisted to come out of it.
- I find the accused suitable a non-custodial mode of treatment and in this case, a probation order subject to the final decision by the honourable court”.
14. Having taken all the above into account, I would observe that the count is liable to imprisonment for life pursuant to section 205 of the *Penal Code*.
15. The state has proposed a sentence of twenty (20) years imprisonment, and the defence proposes a non-custodial sentence in line with the pre-sentence report.
16. The accused appears to have acted in self defence. Nevertheless, she inflicted a stab wound in her lover's chest which was forceful enough to cause massive hemorrhage leading to death. According to the probation report she would be well served if afforded guidance on anger management going forward.
17. As earlier stated, the accused has a child with her in prison, where she has spent just over one year and 4 months. The question that arises is what nature of sentence would best be attuned to her situation whilst addressing the fact that a life was lost, and the potential repetition of her actions due to her anger issues?
18. The sentence should focus on the accused's actions, her anger issues; the fact that she is in her early life at age 22; that she is now a single mother; that given her evident remorse, she potentially appreciates her error and can be readily rehabilitated into normal society.
19. In my view, a non-custodial sentence of four (4) years is appropriate during which the accused shall:
- a) Attend a programme of anger management counselling, self-restraint and rehabilitation on living positively in society.
  - b) Attend a community service programme in which she will be expected to give back to society for no less than one (1) year.



- c) The programme in (a) and (b) above shall be designed and facilitated by the probation officer, who shall maintain a proper record of the said programme and the detailed attendance of the accused.
- d) During the four (4) years of the accused's non-custodial sentence, should she fall afoul of the law and be convicted of any offence, then the non-custodial sentence shall stand vacated and she shall serve a sentence of five (5) years imprisonment from the date of vacation of her sentence and the period she has spent in remand custody shall be deemed to have been taken into account in that sentence.

20. Orders accordingly.

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

.....

**R. MWONGO**

**JUDGE**

**Delivered in the presence of:**

- 1. Mamba: for the State**
- 2. Kiragu: for Accused**
- 3. Accused: Present in Court**
- 4. Court Assistant: Murage**

