



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kinyua (Criminal Case 9 of 2014)
[2021] KEHC 444 (KLR) (29 October 2021) (Ruling)**

Neutral citation: [2021] KEHC 444 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL CASE 9 OF 2014
A MSHILA, J
OCTOBER 29, 2021**

BETWEEN

REPUBLIC PROSECUTION

AND

GEOFFREY MURIITHI KINYUA ACCUSED

RULING

1. The Accused was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*; upon a Plea Bargain Agreement being entered his charge was reduced to manslaughter.
2. The Plea Bargain Agreement dated 17/06/2021 was adopted by the court upon it being satisfied that the accused had understood the contents and that he had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion of any kind.
3. The Accused was charged with having unlawfully killed Lydia Njeri Mwangi on the 15th day of October, 2012 at Karindundu Village, Karatina Mathira East South Sub-County within Nyeri County. He was convicted on his own plea of 'Guilty' of the offence of Manslaughter c/s to Section 202 as read with Section 205 of the; Penal Code.
4. At the hearing hereof the accused was represented by Learned Counsel Mr Muguku whereas Ms. Gicheha was the Prosecuting Counsel for the State. Both counsels were invited to make submissions before sentencing.
5. In mitigation Counsel for the accused submitted that the accused mourned the loss of his beloved wife and that the incident had happened whilst he was intoxicated and he was extremely remorseful. He pleaded for a leniency on the grounds of his medical health condition in that he was sickly and suffered from depression and prayed for a pardon or a non-custodial sentence.



6. The Accused had been arrested on the 18/03/2014 and had spent approximately seven (7) years and four (4) months in custody and he prayed that this period be taken into consideration. Also based on these circumstances the period spent in remand ought to be considered as an adequate custodial sentence and that he be set free to go and fend for his two (2) children as he was now the remaining sole provider and bread winner.
7. Prosecuting Counsel for the State in response submitted that the cause of death of the deceased was strangulation as indicated in the Post Mortem Report which was produced as 'PEXh.1'. The accused fled from the jurisdiction immediately after the incident and was arrested on 18/03/2014 which was two years thereafter. His utterances to the deceased's employer (PW2) and his disappearance from the locality substantially connected him to the murder of his deceased wife.
8. The Accused had no previous record and that he may be treated as a first offender. Prosecuting counsel left the issue of the sentence to be imposed to the discretion of the court.

ANALYSIS

9. It is the duty of this court to impose a sentence that meets the facts and circumstances of the case. This court has taken into consideration the aggravating circumstances in the commission of the offence in that after the fatal injuries were inflicted the Accused locked the house from the outside with the body of the deceased still therein and did a disappearing act from the locality and was arrested after two (2) years from the date of the commission of the offence.
10. The mitigating factors taken into consideration by this court are that the accused readily pleaded guilty and thus saved the court on judicial time. The facts narrated by the defence reveal that the killing was not premeditated and arose from intoxication and a session of love. He has also expressed his remorse and found to have no previous record and was deemed to be a first offender.
11. The applicable law on sentence for the offence is found under the provisions of Section 205 of the Penal Code which reads as follows;

'Any person who commits the felony of manslaughter is liable to imprisonment for life.'
12. The maximum sentence of life imprisonment is usually reserved for the worst case scenario. Based on the aggravating factors notably locking the body of the deceased inside the house and his disappearance of up to two years from the commission of the offence to the time when he was arrested, this court is satisfied that the accused is not deserving of leniency and a non-custodial sentence.
13. The issue of being the sole breadwinner as submitted does not ring true and the question posed by the court is 'who was then fending for the two children during his absence of two years after the unfortunate incident?'
14. This court therefore finds that a custodial term of fifteen (15) years to be an appropriate sentence. It is noted that the Accused was arrested on the 18/03/2014 and had spent approximately seven (7) years and four (4) months in custody pending the hearing and determination of this case. The period spent in remand can be deducted from the sentence.

FINDINGS & DETERMINATIONS

15. For the foregoing reasons this court makes the following findings and determinations;
 - i. A custodial sentence of fifteen (15) years imprisonment is found to be an appropriate sentence;



- ii. The period spent in remand during the pendency of the hearing and determination of the case be deducted from the sentence.

Orders Accordingly.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NYERI THIS 29TH DAY OF OCTOBER, 2021.

HON. A. MSHILA

JUDGE

In the presence of;

Mwaniki for the State

Muguku for the Accused

In the absence of the Accused

Kinyua-----Court Assistant

