



REPUBLIC OF KENYA



**Republic v Munyinyi (Criminal Case E033 of 2020)
[2025] KEHC 1847 (KLR) (Crim) (5 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 1847 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE E033 OF 2020**

**LN MUTENDE, J
FEBRUARY 5, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOENEST MWANGI MUNYINYI ACCUSED

SENTENCE

1. Joenest Mwangi Munyinyi, the Accused, was initially charged with the offence of Murder contrary to section 203 as read with Section 204 of the [Penal Code](#), but, opted to enter into a plea-bargaining arrangement with the State/prosecution as per the plea bargain agreement subsequently signed on 8th April, 2024 that was adopted as an order of this court pursuant to Section 137 H of the [Criminal Procedure Code](#). Consequently, he was convicted of a lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#).
2. Facts of the case are that the accused was married to Miranda Waithera who had a child, Lincon Munyi (Deceased) from a previous relationship. The accused family lived in a single room on a plot owned by his mother situated at Huruma where some of his siblings occupied some of the rooms. At the time, the deceased was a form 2 student at Kirinyaga Boys school but was at home with his siblings due to the COVID-19 pandemic. Their mother had gone to her rural home in Kirinyaga where she had been prior to the incident. During her absence the children would eat at their aunt's house and retreat to their house for other activities.
3. On the fateful day, the 6th October, 2020, the accused took the children to a nearby hotel for supper. He took them back to the house and went to Kariobangi. He returned home at 9:00pm and found the children watching a movie. The accused sat on a chair and his sister Wachu entered and asked the



- children why they had not bathed as they were looking dirty. The accused cautioned her not to ask the children questions.
4. All over a sudden the accused turned to the deceased and accused him of stealing Ksh. 500/- that he had kept in the house. The deceased denied and said that whenever something got lost the accused would accuse him of being the culprit. The accused ordered him to leave the house as he was not his biological son, to which the deceased retorted that he could not leave as his mother married the accused while with him. The accused got agitated and took an empty bottle that was under the bed and hit the deceased on the forehead. He sustained a deep cut on the head. He started bleeding and went outside to clean himself. His siblings followed him while screaming. The accused locked himself inside the house.
 5. Neighbours responded and rushed the deceased to Medecins Sans Frontiers, medical facility, for emergency care and the deceased was pronounced dead at 23:27hrs. The body was moved to Huruma Police Station. Police Officers moved to the scene and arrested the accused who was detained following a court order and subsequently arraigned in this court on 22nd October, 2020.
 6. A post-mortem examination was conducted at the City Mortuary on 9th October,2020 which established that the cause of death was severe craniocerebral trauma due to blunt and sharp force trauma.
 7. To reach an appropriate sentence, this court called for a pre-sentence report. The report dated 17th May,2024, captured views of the secondary victim, the deceased maternal grandmother in whose home he was interred. According to her the family of the accused exhibited a high level of spite and impenitence since they neither attended nor contributed to the funeral arrangements. Further, the accused family chased away the wife of the accused with children that they have never bothered to check on. As a result of the incident, the accused wife is estranged from even her maiden family.
 8. Views of the community obtained from neighbours pointed out that the relationship of the accused and his wife was marred by constant conflict and the intermittent disappearance of his wife. The local administration indicated that the accused presence would bring no meaningful change in peace and stability in the area.
 9. It is recommended by probation and aftercare services that the court considers a lenient sentence of three (3) years under probation supervision.
 10. In pre-sentence mitigation, through learned counsel, Mr. Gichuki of the firm of Gichuki Gakura & Company Advocates, the accused expressed remorse and was a first offender. That his wife stayed away from the matrimonial home hence the accused was taking care of their children with the help of his mother, now deceased. That he is now a born-again Christian who seeks to be accorded a second chance so as to reconcile with his family, including his wife. He has been on medication which has assisted in recovery from depression and bipolar mood disorder, and while in prison has attended many courses resulting into acquisition of certificates.
 11. In response learned prosecution counsel, Ms. Ogweni submits that the impact of what the accused did in the presence of his children has caused trauma and the children are yet to recover from what they witnessed. That the wife of accused and deceased mother is also recovering from the loss of his firstborn child. That the family of accused, in particular a sister and mother needed time to adjust to reality. That it has not been confirmed that the accused has stopped using drugs and alcohol, an argument that is contested by the accused who argues that his wife and children were not interviewed and two of his sisters are of the view that the accused be given a non-custodial sentence.



12. The provisions of Section 205 of the Penal Code enact that:

“ Any person who commits the felony of manslaughter is liable to life imprisonment.”
13. The accused seeks to be given a sentence that does not involve continued incarceration in prison. This kind of sentence is preferable when the accused is a first offender or if the offence the individual faces is a non-serious one so that they are rehabilitated. To determine when to refer an offender to serve a non-custodial sentence, each case must be treated according to its circumstances. The court must consider existence of aggravating circumstances if any, and the mitigating factors. (Also see Sentencing Policy Guidelines) The sentence must be appropriate, just and effective.
14. The offence of manslaughter is serious such that a non-custodial sentence would not be appropriate, unless there exist unique circumstances that led to commission of the offence.
15. The deceased was a child hence vulnerable, who should have been protected by the accused. By killing him, the accused violated the fundamental trust that the deceased had in him. The deceased was not capable of understanding the complexities of life like his mother staying away from her matrimonial home most of the time. The ripple effect of the act of the accused had a great impact on the family. The deceased mother could not be found to be interviewed. The seriousness of the crime cannot be understated.
16. The principle of proportionality should also be considered. The severity of sentence should be comparable with the seriousness of the offence. In Omuse v R [2009] KLR 214, the court held that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and the proper exercise of discretion in sentencing requires the Court to consider that fact and circumstances of the case in their entirety before settling for any given sentence.
17. In Ambani v Republic [1990] eKLR, Bosire J. held that:

“Sentences imposed on accused persons must be commensurate to the moral blameworthiness of the offender ...It is an improper exercise of discretion not to look on the facts and circumstances of the case in their entirety before settling for any given sentence...”
18. A comparison with other sentences meted out show that courts have meted out sentences outside the maximum sentence of life imprisonment for manslaughter.
19. In R v Jared Onyoni Maina [2021] eKLR, Ougo J. sentenced the accused to ten (10) years imprisonment. In that case the accused pleaded guilty to manslaughter, he stated during mitigation that he was drunk and that he would stop taking alcohol. He was 39 years old and had 4 children.
20. The accused herein saved judicial time by plea bargaining. He has been in custody for one year, five months, a period that I do take into consideration. For reasons given, I sentence the accused to Twenty (20) years imprisonment with effect from the date of arrest, 20/10/2020.
21. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF FEBRUARY, 2025.

L.N. MUTENDE

JUDGE

