



REPUBLIC OF KENYA



State v David (Criminal Case 49 of 2018) [2025] KEHC 1305 (KLR) (6 February 2025) (Sentence)

Neutral citation: [2025] KEHC 1305 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 49 OF 2018
DO CHEPKWONY, J
FEBRUARY 6, 2025**

BETWEEN

STATE PROSECUTION

AND

DORCASE SYOBUA DAVID ACCUSED

SENTENCE

1. In Criminal Proceedings, the most difficult stage for the court is that of meting out sentence to offenders.
2. The accused, Dorcas Syombua David had been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#) Cap 63 Laws of Kenya.

The particulars of the offence being that:

“On the night of 28th and 29th September, 2018, at Zimmerman area, in Kasarani Sub-County within Kiambu County murdered Erick Mwangangi Mutua”.

3. On 24th October, 2018, the accused pleaded “not guilty” to the offence of Murder and hearing commenced on 4th November, 2019, six years later, after the Prosecution had presented six (6) witnesses, the accused sought for and was granted a plea bargain wherein the agreement was executed as between the parties on 21st November, 2024. The charge of Murder was then substituted with a lesser charge of Manslaughter Contrary to Section 202 as read with Section 205 of the [Penal Code](#). Particulars are that: “On the 29th September, 2018, at Zimmerman area, in Kasarani Sub-County within Kiambu County the accused killed Erick Mwangangi Mutua”. On 21st November, 2024, the accused pleaded “Guilty” to the offence of Manslaughter.
4. The facts of the case as stated by the Prosecution Counsel are that on 29th September, 2018, at about 0258 hours, a report was made to Kasarani Police Station by a good Samaritan and registered under OB. No.08/29/09/2018 that the deceased had allegedly been stabbed with a knife by a known person



being the accused person. The officer on duty Corporal Fatuma proceeded to the scene in Zimmerman, accompanied by Sergeant Muthoke and P.C David Kipchumba and commenced investigations.

5. In the course of investigations, it was established that the deceased and accused were staying in the same block of apartments and on this particular day, he was relaxing with his friends Jonathan Mwanzia Nyamai and Benjamin Musendi, when he left them and went to the house of the accused person which was on the same floor. The friends did not suspect anything as they believed that the two were in a relationship. That after a short while, the friends heard some arguments from the accused's house and they went there and managed to separate them. Later, the deceased went back to the accused person's house and again an argument ensued and in the process, the deceased was stabbed in the chest which one Justus Mutuku Munyao witnessed.
6. That the deceased who was now bleeding was taken to Neema Hospital at Zimmerman by neighbours but he was pronounced dead on arrival. His body was taken to City Mortuary. That on learning of the death, the members of the public arrested the accused person and took her to the police station. The was no weapon recovered. It was stated that a post-mortem examination was conducted on the body of the deceased by Dr. Muturi, who according to a report dated 4th October, 2018, (PEXB 1), concluded that the cause of his death was a single perpetrating stab wound to the chest. He also reported having observed teeth bites on the right arm of the deceased.
7. On being asked by the court whether the facts presented by the prosecution were true or not, the accused confirmed the facts to be true. The court then proceeded and entered a "Plea of Guilt" and convicted the accused on her own Plea of Guilt.
8. After convicting the accused, what follows is for the court to determine the appropriate sentence for the accused. But before doing this the court called for a social inquiry to be conducted on the accused by the Probation and Aftercare Services Department and for a pre-sentence report to be filed.
9. This is because of the delicate nature of the sentence proceedings. In the South African High Court Case of State Vrs Lebohang Le Khoana & another, the court held:-

“The court has reached a difficult stage of proceeding ...that of composing appropriate sentence to the offenders before court. This process involves a very delicate act, taking into account the seriousness of the offence perpetrated by the offenders, their personal circumstances and the interest of society. In the case of S.V. Zinn (1969) (2), this is what is mostly referred to as trial. The court must also consider the recognized objective of sentencing being prevention, rehabilitation, deterrence and denunciation.
10. The pre-sentence report was filed on 19th December, 2024. In compiling the said report, the Probation Officer indicated that in conducting a social inquiry, it considered the accused's family background, the personal history, circumstances of the offence, attitude towards the offence, view of the victim's family, community's attitude towards the offender and the nature of the offence to come up with the conclusion and recommendations.
11. In her conclusion, the Probation Officer reported that the Accused person is a 34-year-old and single mother to a 12-year-old child and she worked as a bar attendant in a club in Zimmerman. That she deeply regrets her actions and is remorseful and apologizes to the victim's family, her own family and the community at large. She has urged that the court gives her another chance.
12. It is also reported while in prison, the accused has gained skills by attending therapy and counselling sessions which have equipped her life. That her family is very supportive and has tried to reach out to the victim's family for reconciliation and pleaded that they engage in Kamba Cultural Rites normally



executed in such occurrences but this was unsuccessful because they could not meet their demands. The family of the accused continues to plead for their forgiveness. That the local administration and community are not opposed to the accused being granted a lesser sentence as she has no previous criminal history and her family is well known.

13. The Probation Officer recommended that the court considers a 3-year Probation Sentence, during which period the accused will be taken through counselling on matters anger and socialisation at their office. That she will be referred to the Probation Liason Office at Mathari for more intervention strategies and with help of her own family she can be empowered so that she can be able to take care of her child on her own.
14. In mitigating on behalf of the accused, her counsel, Mr. Farrah stated that they are urging the court to be guided by the Sentencing Policy Guidelines in the Gazette Notice No. 2970 of 2016 which advocate for sentences that are rehabilitative, reconciliatory and reintegrative. He also urged that the court takes into account the period the accused has been in custody being six (6) years and four (4) months; pursuant to Section 333 (2) of the [Criminal Procedure Code](#). Further, he has urged for a non – custodial sentence since the accused is remorseful.
15. In support of her mitigation, the accused filed an affidavit sworn on 21st January, 2025, wherein she has stated that she was once married to Makau Ngugi with whom he has one child by the name Sharon Nduku now aged 12 years. She states that she deeply regrets the events leading to commission of the offence which arose out of provocation and self-defence whereby the deceased wanted to have romantic relationship with her but she refused hence the disagreement that led to the fateful fight.
16. According to the accused, she cooperated with law enforcement from her arrest, during investigation and pendency of the trial. That she has shown genuine remorse, and regret for her actions that she took proactive steps of reform including rehabilitation while at prison by attending counselling, community service, religious teachings which have helped her get self-control, enhance her relationship with God and moulded her character to a better person. That at the Langata Remand Prison Resource Centre, the accused acquired weaving, laundry services and various cleaning skills which will aid her in settling. She contends that her continued detention has caused hardship to her family and her only child as they previously relied on her for financial and emotional support. That she is deeply apologetic for her actions which though unintended, led to the death of the deceased. The accused also states that she has been in custody for six (6) years and four (4) months and that prays for a non – custodial sentence while taking into account the commendable presentence report.
17. To determine the appropriate sentence that should be meted against the accused herein, the court has read through and considered the circumstances under which the offence was committed as per the information in the Plea Bargain Agreement dated 21st November, 2024, and the pre-sentence report dated 19th December, 2024, alongside the mitigation of the accused person made by her counsel and in her Affidavit sworn on 21st January, 2025.
18. For a charge of Manslaughter, the sentence provided for under Section 205 of the [Penal Code](#) is as follows: -

“ Any person who commits the felony of Manslaughter is liable to imprisonment for life”.
19. In view of all that, the court has also taken into account the amended guidelines in the Murateru II Case which include a consideration of age of the accused, being a first offender, her plea of guilt, character and record. Although the law has prescribed the punishment for Manslaughter under Section 205 of the [Penal Code](#) to be life imprisonment, the court takes note of the most mitigating factors being



the accused having pleaded guilty to a lesser charge of Manslaughter and the period of six (6) years and three (3) months that she has spent in custody during trial and adopts the Probation Officer's recommendation that the accused will benefit more from a non – custodial sentence, which is aimed at achieving deterrent and restorative results as opposed to retributive results.

20. The court then proceeds to sentence the Accused person to serve three (3) years' Probation Sentence on condition that: -
- a. The accused person must obey the Supervisory Probation Officer and comply with any condition set by the Probation Department.
 - b. She must remain of good conduct.
 - c. She must not commit any offence during the Probation Period.
 - d. The Accused must attend Guidance and Counselling session to be organized by the Probation Department.
 - e. Failure to comply with any of the above conditions, the accused will be arrested and brought back to this court for a custodial sentence to be passed against her.

It is so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 6TH DAY OF FEBRUARY, 2025.

D.O CHEPKWONY

JUDGE

In the Presence of:

Martin – Court Assistant

Ms. Ndeda Counsel for the State

Mr. Dawood Farrah Counsel for Convict/Accused

