



**Republic v Mwaura (Criminal Case 41 of 2019)
[2025] KEHC 3118 (KLR) (6 March 2025) (Sentence)**

Neutral citation: [2025] KEHC 3118 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 41 OF 2019
RB NGETICH, J
MARCH 6, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MICHAEL MBURU MWAURA ACCUSED

SENTENCE

1. By judgement delivered on the 22nd day of November,2024, this Honourable court found the accused MICHAEL MBURU MWAURA guilty and convicted him for the offence of manslaughter contrary to section 202 as read with 205 of the penal code. The particulars of the charge were that the accused on the on the night of 19th September,2019 at Ndarasa village at Juja Sub- County within Kiambu County murdered Catherine Nyambura.
2. On 13th February, 2025 when the matter came up for mitigation, the prosecution counsel submitted that the accused be treated as a first offender. He further submitted that the pre-sentence report has captured the victim’s voice and urged this court to consider that while sentencing.

Pre-sentencing Report

3. From the report, the accused is 35 years old born in Kiambu and raised in Gatundu North sub-county, Ngorongo village. He dropped out of school in class four due to financial difficulties in the family. He started herding cattle and when he attained the maturity age, he moved to Juja and started engaging in unskilled work. He later learnt masonry through apprentice and worked as a mason in Juja until the time of his arrest. The accused was married to the victim herein and the union was blessed with four children who are under the care of the accused’s mother-in-law and her sister. The accused confessed to being in good health. He said he used to abuse alcohol and has no known previous criminal records.
4. Further, the accused’s 3 siblings describe him as a humble, hardworking, obedient person and are concerned about his welfare. His mother described him as a man of good character who has not been



on wrong side of the law. He is emotionally connected to his family as they have visited him in remand severally. The family pray for a lenient sentence on ground that he has a young family to take care of probably a non-custodial sentence and if granted, the family undertake to help in his rehabilitation and reintegration. They stated that he will go back to family land at Ngorogo.

5. The accused stated that on the material day, his wife who is the victim had asked for some money to go to the saloon but he did not manage to get the money so he decided to go on a drinking spree until 11:00 p.m. when he returned home. On arriving home, an argument ensued over why he did not give the victim money for the salon and yet he went to drink. It led to a fight and in the process, the accused he pushed the victim who fell down and did not get up. The accused went to the police station to report. He attributes his actions to his drunken state and anger as a result of not getting casual work on the material day. He was unable to control his emotions and frustrations an act he regrets to-date.
6. The accused says he understands the weight of the charges against him and he is very remorseful and pleads for leniency. He is worried about the welfare of his family as he is the sole bread winner. He seeks forgiveness from the victim's family and regrets having committed the offence as he loved his wife and he had no intentions of harming her. He pleads for a lenient sentence as his young family is suffering while he is in remand. He says he has gone for counselling on anger management and addiction while in remand.
7. The victim's sentiments were obtained from secondary victims being the mother and the sister respectively. They stated that their late daughter and sister was 32 years old at the time of her death. She earned her living through casual jobs. They further stated that she was a hardworking and a humble person. They confirmed that she was married to the accused and together had four children who are now under their care despite them struggling financially. They stated that the death of their loved one in such a manner has affected them psychologically, emotionally and financially as they are struggling to raise her children. They are still very bitter as they have not been able to process the loss of their loved one and they have not healed yet from the incident. They are of the opinion that justice should be served in this matter and propose custodial sentence.
8. The local administration confirms knowing accused and the victim as they used to reside in his area of jurisdiction. He stated that he had known the accused for a long time and he had no criminal history in the community. He stated that community is not hostile towards him. He is of the view that the accused should be granted a lenient sentence or a non-custodial sentence so that he may be reintegrated back into society and fend for his young family and if possible, he be relocated to his ancestral home where he can start all over again.

Mitigation

9. The defence counsel Mr. Mathenge mitigated on behalf of the accused. He submits that the accused expresses remorse for the unfortunate incident leading to the death of his wife who was just 32 years of age at the time of her death whereas the accused was 30 years old. That he is remorseful and as expressed in pre-sentence report, he committed the offence following a quarrel over money with his wife.
10. Counsel submitted that the accused has children to take care of and he has undergone counselling on anger management in remand where he has spent in excess of 5 years which has offered him an opportunity to reconsider his life. He submitted that the accused has sought forgiveness from the deceased's family and that he has good family ties with no history of criminality. That he seeks leniency from this court and as confirmed by pre-sentence report, he is ready to re-integrate back to the community, ready to serve the community to the benefit of his children who are without a parent now so that they can get proper upbringing from their father.



11. Counsel submitted that the accused is fit for a non-custodial sentence and in the event of a custodial sentence, they pray for a lenient sentence so that he can re-integrate with his family. That the accused attributes the offence to alcoholism and submit that though the family of the deceased have not gotten out of the loss of their daughter, they urge this court to look at the totality of circumstances and allow the accused to re-integrate back to the society and take care of his children.

Determination

12. Under section 205 of the *Penal Code* a person convicted of Manslaughter is liable to imprisonment for life. However, the court in Malindi Criminal Appeal No. 12 of 2021 between Julius Kitsao Manyeso vs Republic declared life imprisonment unconstitutional.
13. From the presentence report, it is clear that the victim's family are still bitter with the accused for taking away the life of their loved one. They state that the offence had drained them psychologically, socially and economically. On the other hand, the accused's family pray for a non-custody sentence so as to enable the accused take care of his young family. The local administration proposes a lenient sentence and re-location of accused to his ancestral home.
14. I have considered circumstances surrounding the offence. Looking at the circumstances and sentiments of the victim's family together with the local administration and also taking into consideration the fact that accused is a first offender, I am inclined to impose a lenient custodial sentence.
15. Final Orders: -
 1. The accused to serve 10 years imprisonment.
 2. Period served in remand from the date of arrest to be computed in the sentence above.
 3. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 6TH DAY OF MARCH 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

* Mr. Magero for State.

* Ms. Ngugi holding brief for Mr. Mathenge for accused.

* Accused present.

* Elvis/Momanyi – Court Assistants.

