



**Republic v Kimwele & 3 others (Criminal Case E029 of 2020)
[2025] KEHC 4639 (KLR) (3 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4639 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
CRIMINAL CASE E029 OF 2020**

LW GITARI, J

APRIL 3, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

JANE MUENI KIMWELE 1ST ACCUSED

HELLEN KANINI KIMWELE 2ND ACCUSED

BETH NDANU KIMWELE 3RD ACCUSED

WILLIAM KILONZO MUENI 4TH ACCUSED

JUDGMENT

1. The accused person are charged with the offence of Manslaughter contrary to Section 202 as read with Section 205 of the *Criminal Procedure Code* after a successful pleas bargaining agreement between the accused and the State. Initially, the accused were charged with murder.
2. The particulars of the charge are that on 14/4/2020 at around 12.20am at Mutulu Village, Kasyathuni Sub-location Tseikuru Sub-County in Kitui County, jointly and unlawfully killed David Mutinda Kimwele. All the accused pleaded guilty to the charge.
3. The brief facts of the case are that on 13/10/2020 at about 2100hrs a meeting was held at Mumbe Kimwele's homestead to deliberate on the most appropriate cause of action for one their kins WMK who was mentally ill. Those in attendance were Mumbe Kimwele, Hellen Kimwele, Beth Kimwele, Pius Ndolo and David Mutinda. Divergent opinions were given with some suggesting that a witch doctor be consulted and others suggesting that he be taken to church. No solution was reached. After the meeting, the deceased started quarrelling with one Mumbe Kimwele and wanted to beat her for unknown reasons.



4. 1st accused went to her rescue and cut the deceased on the head with a panga. The deceased started running away. He 3rd and 4th accused pursued him while beating him using sticks. The deceased fell down. The 2nd accused stabbed the deceased to death as he fell down. The police were informed and conducted investigations. The accused were arrested and recorded out of court confession.
5. A postmortem was conducted and the doctor formed the opinion that the cause of death was severe hemorrhage from deep cut wounds due to assault by sharp weapons. The postmortem reports were produced as exhibit 1. The accused admitted the facts of the case and were convicted of the charge accordingly. They then proceeded to give their mitigation through their learned counsel Mr. Wambua. He urged the court to note that they are children of Mwimbe Kimwele. The accused have been in custody for five years. That the matter is delicate as it involves witchcraft which is a serious issue in Kitui and Mwingi. That it was sensitive when the deceased suggested witchcraft.
6. That the 1st and 4th accused are a mother and child. That it will be unfortunate for the rest of the family. That the mother of deceased has forgiven them as it was accidental and had not been planned. He urged the court to consider a none custodial sentence. This court called for a Social Inquiry Report and a Probation Officer's Report was filed in respect of all the accused.
7. I have considered the Social Inquiry Reports in respect of all the accused person. I have considered the respective reports for each of the accused person. The reports are positive that the accused may be considered for a none custodial sentence. I have considered the fact that the accused person have pleaded guilty to the charge and the mitigation. The principles underpinning the sentencing process are proportionately, that is to say, it must be proportionate to the offending behavior and it must be more or less than is merited of the gravity of the offence.
8. Secondly, the court should consider Equality, uniformly, parity, consistency and impartially. It should also consider inclusiveness that is to say that both the offender and the victim should participate in and inform the sentencing process. The court also considers the totality of the sentence. The respect for human rights and fundamental freedoms is also a principle to be considered.
9. The objective of sentencing are retribution, meant to punish the offender for criminal conduct, deterrence, rehabilitation of the offender, restorative justice, community protection, denunciation, reconciliation and reintegration. These are the principles and the objectives which the court has to take into consideration when passing the sentence.
10. Taking all these into considerations, it is my view that the accused have been in custody for quite some time and have suffered. The reports shows that they have regretted the offence and are remorseful. They have pleaded with the court for lenience. The court also notes that they pleading guilty they have saved the precious judicial time. For these reasons, I will consider a none custodial sentence to discourage the offence and to give the accused an opportunity to reconcile and compensate the family of the deceased as per the ongoing process. The offence is however serious and need to be discouraged.

Sentence

11. Each accused will serve seven (7) years imprisonment as follows: Five (5) years to be served in prison. The last two (2) years to be served on Probation. Since the accused have been in custody, the sentence to run from 28/10/2020 to take into account the time spent in custody awaiting trial in time with Section 333 (2) of the *Criminal Procedure Code*. It is so ordered.

DATED, SIGNED AND DELIVERED AT KITUI THIS 3RD DAY OF APRIL 2025

HON. LADY JUSTICE L. GITARI



JUDGE

