



**Republic v Gathogo (Criminal Case 2 of 2019)
[2024] KEHC 1234 (KLR) (14 February 2024) (Sentence)**

Neutral citation: [2024] KEHC 1234 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE 2 OF 2019
CW GITHUA, J
FEBRUARY 14, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ANTONY GITONGA GATHOGO ACCUSED

SENTENCE

1. The accused, Antony Gitonga Gathogo was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code but he was convicted on his own plea of guilty of the lesser offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code under a plea bargaining agreement filed in court on 17th November, 2023.
2. The particulars of the charge alleged that on 6th February, 2019 at around 2200 hours at Makuyu Township in Kiharu constituency, jointly with others not before the court, the accused unlawfully caused the death of Samson Kamau Kibe.
3. Briefly, the facts of the case which the accused admitted as true are that on 6th February, 2019, the accused and the deceased were drinking at Maragi Bar within Murang'a Township when the accused snatched Kshs. 60 from the deceased. As the deceased was trying to get the money back, the accused was joined by another person not before the court and after failing to retrieve the money, the deceased raised an alarm. The accused and his friend pushed him and he fell to the ground. They then ran away from the scene but they were chased by other Patrons in the bar who had seen what had happened. The chase resulted in the arrest of the accused but his friend managed to escape.
4. When the deceased was taken to hospital for treatment, he was pronounced dead.
An autopsy conducted on 8th February, 2019 revealed that the cause of the deceased's death was a severe head injury secondary to blunt trauma.



The matter was reported to the police subsequent to which the accused was arrested and charged with the offence of murder which was later reduced to manslaughter.

5. In his plea in mitigation on behalf of the accused, learned counsel, Mr Kimani submitted that the accused was a first offender aged 27 years. He urged the court to be lenient when passing sentence claiming that accused was married with one child and he was the sole bread winner for his family; that he was very remorseful about the incident and invited the court to note that the accused had been in custody since February, 2019.
6. I have considered the accused's plea in mitigation and the circumstances surrounding commission of the offence as detailed in the facts of the case. It would appear that the deceased's death was not premeditated but was the unfortunate outcome of a brawl involving two drinking mates who were struggling over possession of some money.
7. I have taken all relevant factors into account including the views expressed by members of the victim's family as required by the Victims Protection Act of 2014 which are captured in the pre-sentence report filed in court on 8th February, 2024. I have also noted the findings of the probation Officer in the pre-sentence report which confirms that the accused did not pose any threat to the lives or safety of members of his community and his family was ready to assist in his resettlement and reintegration.
8. Given the foregoing and considering that the accused is a relatively young first offender and the circumstances in which the offence was committed as well as the fact that he has been in custody since 18th February, 2019, I am of the considered view that despite gravity of the offence, a custodial sentence would not be appropriate in this case as it will not effectively serve any of the objectives of sentencing set out in the Judiciary's Sentencing and Policy Guidelines, 2016.
9. It is thus my finding that a non- custodial sentence would be most befitting in this case and will better serve the interests of justice as it would facilitate rehabilitation and reintegration of the accused into the society. In the premises, I hereby exercise my discretion and sentence the accused to serve three years on probation during which time he shall undergo Guidance and Counselling.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 14TH DAY OF FEBRUARY, 2024.

C.W GITHUA

JUDGE

In the presence of:

The Accused

Mr. Kimani for the Accused

Ms. Muriu for the Prosecution

Ms. Susan Waiganjo Court Assistant

