



**Republic v Kirubi (Criminal Case E003 of 2023)
[2024] KEHC 1663 (KLR) (14 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1663 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE E003 OF 2023
GL NZIOKA, J
FEBRUARY 14, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JAMES NJUGUNA KIRUBI ACCUSED

JUDGMENT

1. The accused was arraigned before the court On 16th March 2023, charged with the offence of murder contrary to section 203 as read together with section 204 of the Penal Code (Cap 63) Laws of Kenya.
2. The particulars of the charge are that on the 26th day of February 2023 at Kabati Area, in Naivasha Sub-County within Nakuru County he murdered Serah Mugure Njenga.
3. The information was read to him and he pleaded not guilty. The matter was set down for hearing, however the defence requested for plea bargain negotiation. Subsequently the parties engaged in plea bargain negotiation and on 11th October 2023, filed a plea bargain agreement.
4. Pursuant thereto the accused was charged with the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code.
5. The fresh charges were read to the accused who pleaded guilty thereto and a plea of guilty was recorded. The facts of the case read that, on the 26th February 2023, the accused was drinking in the bar with the deceased who was his lover. That they disagreed and a quarrel ensued between them and continued to their home.
6. That, the deceased was heard saying that the accused had stabbed her with a knife and sought for help. The neighbour responded and found her groaning in pain while holding her chest and bleeding a lot. The Red Cross Ambulance rushed her hospital but unfortunately she was confirmed dead on arrival due to the injuries sustained.



7. The matter was reported to Naivasha Police Station, in the meantime the accused had ran away. However, he later surrendered, was arrested and interrogated. That, he took the police officers to his house and showed them the knife (Pexh 1) used to stab the deceased.
8. The government analysis report was produced (Pexh 3) confirmed the knife was taken for analysis and the results indicated that it was stained with the deceased's blood.
9. Further, a post mortem was conducted on the deceased's body and concluded that the deceased died as a result of the injuries the accused inflicted on her chest. The post mortem report was produced as (P. exh 2). The accused confirmed the facts were correct in total as read out and was convicted on his own plea of guilty.
10. The prosecution told the court that the accused is a first offender. The learned counsel Mr. Gichuki for the accused offered mitigation submissions on behalf of the accused to the effect that, the accused is forty-six (46) years old and has lost his job as a driver at Naivasha Sub-County. That, he is remorseful, is a first offender and pleaded for a non-custodial sentence.
11. Be that as it may, the court ordered for and received a pre-sentence report, which indicates that the accused is forty-seven (47) years' old and has five siblings though one is deceased. Both his parents are deceased. That, his parents were well established and had permanent dwelling at Kabati Estate near the cemetery, therefore he has a permanent place of abode.
12. That, he completed his primary education but did not proceeded to secondary school. Further, he under took a driving course and obtained a valid driving license and was employed by the County Government of Nakuru as a driver deployed to Naivasha, where he worked prior to his arrest.
13. Further, the accused had a first marriage where he was blessed with two children but the marriage failed, and the children reside with their mother. Thereafter he entered into a relationship with the deceased, who had a mature son, and they lived together for six (6) years.
14. That he is remorseful and has learnt his lesson during the one (1) year he has been in custody and voluntarily pleaded guilty for the offence of manslaughter. That, he is fearful he will lose his job with the County Government of Nakuru.
15. Further, his family does not condone crime and have sent messages of condolences to the deceased family. That, they have a good relationship with the accused and visited him regularly while in remand. Furthermore, his cousin and mother in law are willing to assist him in the rehabilitation process and seek that he be given a light sentence so that he can resume working.
16. In addition, the Area Chief of Naivasha Town, Mr, Joel Rutto, indicates that the accused does not have previous records of misconduct, and there is no hostility towards him from the community as the offence was viewed as a domestic matter and therefore there is safe landing if he is released.
17. The Directorate of Criminal Investigation (DCI) through PC Owang indicated that the accused must have learnt his lesson while in remand and there is no objection if he is given a lighter sentence to enable him to resume his work.
18. The family of the deceased, through her son and uncle, stated that they were emotionally impacted by the loss of a loved one but have no objection to the accused being given a light sentence.
19. The report by the the Probation officer, Mr. G. M. Chege recommends a non-custodial sentence preferably probationary service for a maximum of three (3) years and that the probation department shall provide an appropriate treatment and/or resettlement plan.



20. I have considered all the reports and submissions by the parties. I have also considered the principles underpinning the sentencing process as stated under clause 1.2 of the Sentencing Guidelines (2023) are considered as follows: -

1. Proportionality: The sentence meted out must be proportionate to the offending behavior meaning it must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behavior is weighted in view of the actual, foreseeable and intended impact of the offence as well as the responsibility of the offender.
2. Equality/Uniformity/Parity/Consistency/Impartiality: The same sentences should be imposed for same offences committed by offenders in similar circumstances.
3. Accountability/Transparency: The reasons behind the determination of sentence should be clearly set out and in accordance to the law and the sentencing principles laid out in these guidelines.
4. Inclusiveness: Both the offender and the victim should participate in and inform the sentencing process.
5. Totality of the Sentence: The sentence passed for offenders convicted for multiple counts must be just and proportionate, taking into account the offending behaviour as a whole.
6. Respect for Human Rights and Fundamental Freedoms: The sentences imposed must promote and not undermine human rights and fundamental freedoms. Whilst upholding the dignity of both the offender (and where relevant, the victim), the sentencing regime should contribute to the broader enjoyment of human rights and fundamental freedoms in Kenya. Sentencing impacts on crime control and has a direct correlation to fostering an environment in which human rights and fundamental freedoms are enjoyed.
7. Enhancing Compliance with Domestic Laws and Recognised International and Regional Standards on Sentencing: Domestic law sets out the sentences that can be imposed for each offence. In addition, those international legal instruments, which have the force of law under Article 2 (6) of *the Constitution* of Kenya, should be applied. There are also international and regional standards and principles on sentencing that, even though not binding, provide important guidance on sentencing.

21. In the same vein, I have considered the objectives of sentencing as stated under clause 1.3 of the Sentencing Guidelines (2023), as follows:

- a. Retribution: To punish the offender for his/her criminal conduct in a just manner.
- b. Deterrence: To deter the offender from committing a similar offence or any other offence in future as well as to discourage the public from committing similar offences.
- c. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.
- d. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs.
- e. Community protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.



- f. Denunciation: To clearly communicate the community's condemnation of the criminal conduct.
 - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - h. Reintegration: To facilitate the re-entry of the offender into the society.
22. I note the sentence provided for under the law for the offence of murder is stipulated under section 205 of the Penal Code as follows:
- “ Any person who commits the felony of manslaughter is liable to imprisonment for life.”
23. In the instant matter, I have considered the circumstances under which the offence was committed. I have also considered that, the accused has pleaded guilty to a lesser charge of manslaughter. I have considered that, he has been and is a first offender. The mitigation offered and the detailed pre-sentence report is also considered.
24. It is evident from the pre-sentence report that, all the persons interviewed are of the view that the accused be released on a non-custodial sentence to resume his employment with the County Government of Nakuru.
25. However, what has eluded all sundry is the fact that, a life was lost prematurely. The loss of an individual is a loss to the entire society. Further the circumstances under which the offence was committed reveal that the accused is a person who abuses alcohol frequently and in deed he was not sober when he committed the offence.
26. It is clear that, he acted out of rage or temper. The entire pre-sentence report does not indicate whether the said issue has been addressed. Thus the release of the accused on a non-custodial sentence must be based inter alia on the consideration that, once released the society will be safe from harm. As of now that is not guaranteed herein.
27. In the given circumstances, I don't find a non-custodial sentence to be appropriate. The accused need more time away from the society for rehabilitation.
28. Having considered the period of about one year he has been in custody, I sentence the accused to serve a custodial period of seven (7) years from today's date. For clarity the subject sentence shall be served from the date of this order subject to remission.
29. It is so ordered. Right of appeal 14 days explained

DATED, DELIVERED AND SIGNED THIS 14TH DAY OF FEBRUARY 2024.

GRACE L. NZIOKA

JUDGE

In the presence of: -

The accused present virtually

Mr. Abwajo for the State

Mr. Gichuki for the Accused

Ms. Ogutu: Court Assistant

