



**Republic v Simba (Criminal Case 21 of 2020)
[2024] KEHC 1052 (KLR) (8 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1052 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 21 OF 2020
RM MWONGO, J
FEBRUARY 8, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

MARY NJERI SIMBA ACCUSED

JUDGMENT

1. The accused was charged with the murder Beatrice Onyango on 18th August, 2020. On 28th September, 2020 she pleaded not guilty to the offence. Before the hearing began in earnest, the defence on 9th December, 2021 proposed a plea bargain agreement (PBA).
2. The matter was given a date for Plea Bargain Agreement settlement on 29th May, 2023 to give the parties time to consider the proposal. On 3rd October, 2023, the parties availed the signed Plea Agreement to the court pursuant to Section 137A (i) and 137B of the *Criminal Procedure Code*.
3. The PBA dated 27th September, 2022 was adopted by the court pursuant to Section 137G of the *Criminal Procedure Code*. Further, the court being satisfied that the accused had understood the contents of the PBA and that she had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion.
4. The brief facts of the case, according to the PBA, are that on 15th August, 2020 at Kwa V area within Mwea West sub-county at about 6.00 pm the deceased was at her place of work selling mandazi to customers. The accused came to ask about a suspected affair with her husband which the deceased ignored. The accused then hit the deceased with a frying pan on the face forcing the kitchen knife she was holding to fall down.
5. In the ensuing melee, the deceased hit the accused with a rolling pin and a cooking spoon as they continued fighting. Rolling on the floor, the accused got hold of the knife she had punched out the



- deceased earlier on and used it to stab the deceased on the chest. The deceased was rushed to Sagana Hospital where she succumbed to her injuries. The body was taken to Kibugi Funeral Home.
6. The post-mortem report dated 20th August, 2020 indicates that she died due massive internal hemorrhage following penetrating chest injury after assault with a sharp object.
 7. The court thereby convicted the accused for manslaughter on 3rd October, 2023. The Pre-Sentence Probation Report had been filed hence the matter was set for mitigation on 8th November, 2023.
 8. The defense counsel made the following submissions on mitigation. He submitted that the accused was a 1st offender and remorseful. She was 38 years old and had 3 children. She was the sole breadwinner of her family including paying school fees for her children. She had been in remand for 1 year and 8 months. During that period, she was of good behaviour. Further, the probation rep
 9. The Probation Report indicates that the victim left behind five children, two of whom are in primary school grades three and five. The older children take care of the younger ones. The loss of the mother is therefore a big burden to the survivors. The Report also indicates that the accused appears to have committed the offence out of intense anger provoked by the belief that the husband was in a relationship with the deceased.
 10. The accused stated that she did not intend to kill the victim but wanted to teach her a lesson. She had talked to the victim's daughter Alice Akinyi who agreed to forgive her.
 11. The accused is not viewed as a threat to the community and is not likely to be harmed by members of the public should he be released. After their mother's demise the older siblings took over in caring and providing for the younger siblings. They rarely communicate with their relatives in Kisumu.
 12. The Probation Report recommends a non-custodial sentence and recommends Community Service Order for the accused, in which she can work at the Assistant Chief's Office, Getuya.

Analysis and determination

13. The applicable law on sentence for the offence of manslaughter is found under the provisions of Section 205 of the [Penal Code](#) which reads as follows;

“ Any person who commits the felony of manslaughter is liable to imprisonment for life”
14. The section provides that a person guilty of manslaughter is liable to face a maximum sentence of life imprisonment. There is nothing to prevent a court meting a lesser sentence, depending on the circumstances.
15. This court has taken into consideration the aggravating circumstances in that the convict murdered the victim by stabbing her with a sharp object causing her massive internal hemorrhage. According to the Post mortem report, there were multiple stab wounds on the head (3 in number) all exposing the skull; two wounds on the back not penetrating to the chest; and two on the front of the chest.in addition, the lung had a wound on the left side, as did the pulmonary artery.
16. The wounds suggest a definite intention to seriously harm and incapacitate the deceased. Even worse, it is noted that it was the accused who went to the workplace of the deceased to confront her concerning whether she was having an affair with the assailant's husband. When she did not get any satisfactory answers, the accused started a fight by hitting the deceased. Thus, fault lies squarely on the accused for starting the fight that ended in the killing.



17. The supreme Court decision in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR gives guidelines on mitigating circumstances to be considered before sentencing as follows:

“In sentencing the court will consider mitigating factors such as the following:

- a. Age of the offender;
- b. Being a first offender;
- c. Whether the offender pleaded guilty;
- d. Character and record of the offender;
- e. Commission of the offence in response to gender-based violence;
- f. The manner in which the offence was committed on the victim;
- g. The physical and psychological effect of the offence on the victim’s family;
- h. Remorsefulness of the offender;
- i. The possibility of reform and social re-adaptation of the offender;
- j. Any other factor that the Court considers relevant.”

18. I have taken into consideration the above sentencing guidelines, the Judiciary Sentencing Guidelines, and the Probation Report that recommended for a non-custodial sentence. In my view, the accused satisfies the criteria for a reduced sentence from the maximum sentence of life imprisonment.

19. Accordingly, I hereby sentence the accused to imprisonment for a term of twelve (12) years with effect from the date of her conviction; to be reckoned as follows:

- a. The accused is entitled under the Prison Act to remission of one-third of her sentence which is 4 years leaving a balance of 8 years.
- b. Of this balance the accused shall serve five (5) years in prison custody and the balance of the term shall stand suspended.
- c. Provided that if during the period of suspension, the accused shall fall afoul of the law and be convicted for any offence, the suspension shall automatically abate and the accused shall be incarcerated for the remaining term of the suspension.

20. Orders accordingly.

DATED AT KERUGOYA THIS 8TH DAY OF FEBRUARY, 2024

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R. MWONGO

JUDGE

Delivered in the presence of:

Mary Njeri Simba the Accused in Person

Asiimwe for the accused

Murage, Court Assistant

