



**Republic v Thuku (Criminal Case E004 of 2022)  
[2024] KEHC 1006 (KLR) (8 February 2024) (Sentence)**

Neutral citation: [2024] KEHC 1006 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL CASE E004 OF 2022  
RM MWONGO, J  
FEBRUARY 8, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**FELICINA WANGARI THUKU ..... ACCUSED**

**SENTENCE**

1. The accused was charged with the murder of her boyfriend Evans Kariuki Muthoni, on 7<sup>th</sup> February, 2022. On 10<sup>th</sup> March, 2022 she pleaded not guilty to the offence. On 28<sup>th</sup> March, 2023 the defence proposed a Plea Bargain Agreement. The matter was given a date for Plea Bargain Agreement settlement on 4<sup>th</sup> October, 2023 to give the parties time to consider the proposal.
2. On 30<sup>th</sup> October, 2023, the parties availed the signed Plea Bargain Agreement (PBA) pursuant to Section 137A (i) and 137B of the *Criminal Procedure Code*.
3. The Plea Bargain Agreement (PBA) dated 1<sup>st</sup> November, 2023 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 he had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion.
4. According to the PBA, the brief facts of the case are that on 22<sup>nd</sup> January, 2022 at Gituto village at about 1.00 am the accused was fast asleep with her son aged 3 years when she was awoken by a knock on her door. The deceased, her former boyfriend, wanted to enter into the house. She opened the window to hand him a blanket but he forced his way into the house and began to assault her. She ran from the house, half naked, but returned later. The accused, however, continued to beat her and destroy items in the house.
5. She managed to break away from the deceased, and in anger she picked a kitchen knife. She stabbed the deceased on the stomach causing the deceased to fall outside the house while bleeding profusely.



- The deceased was rushed to Karira Mission Hospital where he succumbed to his injuries. Distraught at what had happened, she started crying and run towards Ndorome Shopping Centre.
6. She surrendered herself and was arrested. The kitchen knife she used, and bloodstained T-shirt were picked as exhibits by the police.
  7. The post-mortem report dated 27<sup>th</sup> January, 2022 indicates that the deceased died due to hemorrhagic shock due to massive hemoperitoneum from perforated abdominal aorta by a sharp object in an assault.
  8. The court thereby convicted the accused for manslaughter on 30<sup>th</sup> October, 2023. The Pre-Sentence Probation Report had been filed hence the matter was set for mitigation on 9<sup>th</sup> November, 2023.
  9. The defence counsel made the following submissions on mitigation: That the accused was a 1<sup>st</sup> offender and remorseful for the incident; That she had separated with the deceased due to their violent relationship; That. she has been in custody for 2 years and has done various courses such as bible study and Prisoners Journey and Christian Fellowship; and that the probation report is favourable and recommends a non-custodial sentence. They prayed for a non-custodial sentence.
  10. The prosecution submitted: That the accused has no child with the deceased; That the two families have not reconciled; that the accused did not have intention to kill the deceased. The prosecution prayed for a non-custodial sentence with stringent terms.
  11. The Prison Service filed a report on 31<sup>st</sup> May, 2023 which was favourable and also recommended a non-custodial sentence.
  12. The question is whether the sentence recommended in the Plea Bargain Agreement should be adopted.

### **Analysis and Determination**

13. The Probation Report indicates that the accused is 24 years of age. Her father's whereabouts are unknown since 2018 while her mother is dead. She has been living with her maternal aunt and uncle. The family engages in rice farming to earn a living. The accused dropped out of school in form 1 and gave birth to a son in 2018. She was in a brief marriage with the child's father but they separated in 2021. Since her arrest, the child is in custody of her maternal aunt.
14. In the Report, the accused stated that she was in an abusive relationship with the deceased leading them to separate. She killed him in self-defence.
15. According to the Probation Report, 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. Her victim was about 23 years old and had not borne a child with the deceased. The victim's family are still bitter and in the process of healing. The two families have not reconciled and they advocate for a custodial sentence.
16. The Probation Report recommended the accused for a non-custodial sentence and recommends Community Service Orders at the chief's office Nguka.
17. The applicable law on sentence for the offence of manslaughter is found in Section 205 of the [Penal Code](#) which provides as follows;  
'Any person who commits the felony of manslaughter is liable to imprisonment for life'
18. The section provides that an accused is liable to life imprisonment as the maximum sentence. This court has taken into consideration the aggravating and mitigating circumstances in this case.
19. It is clear that the offender killed the victim by stabbing him with a sharp object causing severe abdominal injury.



20. The supreme Court decision in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR provides guidelines on the 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.”

### **Conclusion and Disposition**

21. I have taken into consideration the above sentencing guidelines; the Judiciary Policy on Sentencing; the Probation Report that recommended for a non-custodial sentence, and the mitigating circumstances. These include that the offender was defending herself from an attack by her boyfriend. The accused satisfies the criteria for a reduced sentence from the maximum life imprisonment.
22. I have also taken into consideration that the accused has spent two years in remand custody
23. Accordingly, I sentence the accused to seven (7) years imprisonment from the date of her arrest to be reckoned as follows:
- a. The accused is entitled to remission of one-third of her sentence, which leaves a balance of four (4) years and eight (8) months of her sentence;
  - b. The accused has served two (2) years of that balance, leaving two years and 8 months
  - c. The accused shall serve the balance of her sentence as a non-custodial sentence performing a programme of community service designed by the Probation Officer, and such programme shall be performed at the Chief’s Office, Nguka, under the supervision of the Chief, Nguka.
  - d. During the period of her non-custodial sentence, the accused shall attend a programme of counselling and rehabilitation focused on Anger Management and Good living, and a record of the said programmes shall be kept and availed to the court on demand.
  - e. Should the accused fall afoul of the law and be convicted of any offence during the remaining period of her sentence, the sentence herein may be reviewed by this court forthwith and she may be required to serve any balance of her sentence in prison without the option of remission.
24. Orders accordingly.

**DATED AT KERUGOYA THIS 8<sup>TH</sup> DAY OF FEBRUARY, 2024**



.....

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

1. Felicina Wangari Thuku then Accused in person
2. Kanga holding brief for Wambui for the Accused
3. Mamba for the State
4. Murage, Court Assistant

