



REPUBLIC OF KENYA



**Republic v George (Criminal Case 3 of 2017)
[2024] KEHC 1009 (KLR) (5 February 2024) (Sentence)**

Neutral citation: [2024] KEHC 1009 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 3 OF 2017
RM MWONGO, J
FEBRUARY 5, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMSON KIURA GEORGE ACCUSED

SENTENCE

1. The accused was charged with the murder of his younger brother, Charles Njuki Njogu on 3rd April, 2017, at Kathindi Village, Rwambiti, Kianyaga Sub-location in Kirinyaga County. On 15th May, 2017 he pleaded not guilty to the offence. The case proceeded for hearing, and four prosecution witnesses testified.
2. On 26th April, 2022 the defence proposed a plea bargain agreement. Negotiations took some time and the matter was finally given a date for Plea Bargain Agreement (PBA) settlement on 5th June, 2023.
3. The PBA was finally concluded pursuant to Section 137A (i) and 137B of the *Criminal Procedure Code* and the signed Plea Agreement was availed in Court on 5th June, 2023.
4. The Court adopted the PBA pursuant to Section 137G of the *Criminal Procedure Code*. This was after the Court was satisfied that the accused understood all his rights, and that he had entered into the PBA voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion, and that he had his full mental faculties,
5. The brief facts of the case are that on 3rd April, 2017 at Kithindi village at about 21.30 pm the accused who is a brother to the deceased was at home with his wife as he had been arranging some timber in his house. They had spent the day splitting timber for his dwelling house. He had bought some alcohol that he started drinking. He then spotted the deceased entering the store and coming out with a bag of cement. He ran for a *panga* in a nearby unfinished house. He accosted the deceased and a fight ensued. The deceased was badly cut with a *panga* on his head and hands. He died of his injuries moments later.



6. The post-mortem report dated 6th April, 2017 indicates that the deceased died due to severe head injury caused by a sharp object in an assault.
7. The court thereby convicted the accused for manslaughter on 5th June, 2023. The Pre-Sentence Probation Report had been filed hence mitigation was scheduled for 11th October, 2023.
8. During mitigation, the defence counsel made the following submissions. That the accused was a 1st offender and remorseful. He has been in custody since 2017. He is a family man with a wife who takes care of his sick mother. He has one son. He asked the Court to take into account the Probation Report which gave a favourable recommendation. He prayed for a non-custodial sentence.
9. The prosecution submitted that the accused has mechanical skill, and that he will live with the stigma of killing his brother because of alcohol. Counsel added that there should be a requirement for anger management and counselling on alcoholism or rehabilitation. The prosecution prayed for a custodial sentence of 4 years.
10. The Prison Service had also filed a report on 30th October, 2023. The report was favourable, and proposed a non-custodial sentence.

Analysis and Determination

11. The only issue is what sentence ought to be meted on the accused.
12. The Probation Report indicates that the accused is 51 years of age. His father died in 2010 while his mother is bedridden due to bad health. He is the ninth born of ten siblings. The accused dropped out of school in class six due to poverty. He has gained mechanical and masonry skills through apprenticeship. He married Purity Njeri through a church wedding in the year 2000. They have one child together. He confessed to abusing alcohol since 1988, which triggered his criminal act. He has never been convicted before.
13. 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. His victim was about 40 years old, he did not have a family by the time of his demise. The paternal uncle said the family has healed and did not hold any grudge against the offender. They support his released from prison to support his sick mother. brother in law and his wife are agreeable to her being released from prison. The Probation Report recommended the accused for a non-custodial sentence and Community Service Order at the chief's office Rwambiti. Further, he will be accorded guidance and counselling in anger management.
14. 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”

The section provides for the maximum sentence that is life imprisonment.
15. This court has taken into consideration the aggravating circumstances in that the convict murdered the victim by cutting him with a sharp object causing severe head injury.
16. The Supreme Court decision in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR gave 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.
17. Taking into consideration the above sentencing guidelines and the Probation Report with the recommendation for a non-custodial sentence, the accused satisfies the criteria for a reduced sentence from the maximum sentence of life imprisonment.
18. I have also taken into consideration the fact that the accused has been in remand custody for 6 years and 8 months since his arrest on 11th April, 2017.
19. Accordingly, I sentence the accused to twelve (12) years and eight (8) months imprisonment, to be reckoned as follows:
- a. The accused is entitled under the Prison Act, to remission of one-third of his sentence (4) years which is hereby deducted leaving a period of seven (7) years and two (2) months;
 - b. He has been in remand custody for 6 years and 8 months, which is hereby taken into account, leaving a balance of six (6) months of the sentence term;
 - c. The accused shall serve the balance of 6 months on a non-custodial sentence in Community Service at Rwambiti Chief's Camp under supervision of the Chief;
 - d. During the term of his non-custodial sentence, the accused shall also attend a counselling programme on Anger and Conflict Management designed and facilitated by the Probation Officer, and a record of such attendances shall be maintained by the Probation Officer.
20. Orders accordingly.

DATED AT KERUGOYA THIS 5TH DAY OF FEBRUARY, 2024

R. MWONGO

JUDGE

Delivered in the presence of:

1. Samson Kiura George, the Accused, in person.
2. Otuke for the Accused
3. Mamba for the State
4. Murage, Court Assistant

