



**Republic v Kimani (Criminal Case 40 of 2018)
[2024] KEHC 899 (KLR) (5 February 2024) (Sentence)**

Neutral citation: [2024] KEHC 899 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL CASE 40 OF 2018
SM MOHOCHI, J
FEBRUARY 5, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JANE MUGURE KIMANI ACCUSED

SENTENCE

1. The accused was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; upon a Plea Bargain Agreement being entered the charge was then reduced to manslaughter;
2. The Plea Bargain Agreement dated 6th November, 2023 was adopted by the Court upon it being satisfied that the accused had understood the contents and that she had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion;
3. The accused was accused of having unlawfully killed Gift Kimani Wangeci (minor) on the 4th day of August, 2018 at Piave Village, within Njoro Sub-County in Nakuru County; the accused was convicted on her own plea of ‘Guilty’ to the offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code;
4. At the hearing hereof, the accused was at all times represented by Learned Counsel Mr. Imbwaga whereas Ms. Jackie was the Prosecuting Counsel for the State; both counsels were invited to make submissions before sentencing was passed;
5. Prosecuting Counsel for the State submitted that, on the 4th of August 2018, the accused together with her nephews herein Elvis Kimani, Mathew Ngige and Gift Kimani Wangeci (deceased) were left at home by their grandparents as they went to graze cattle at a nearby grazing field. At around 12.00hrs the children were playing in their grandfather’s living-room when they heard their aunt (accused) shout at the deceased that " Kioni and Njoki wako na mashetani " that she proceeded to Kick the deceased on



the back and he fell, she then picked a piece of firewood and started beating the deceased on the thighs and the head as a result of which the deceased became unconscious.

6. Elvis Kimani and Mathenge Ngige ran to where their grandfather was grazing and told him that, the accused had beaten and injured the deceased. He (Ngugi Kimani) rushed to the house and found the deceased lying unconscious, bleeding from the mouth and nose. He called his neighbor Rachael Wambui they together rushed the deceased to the hospital however he was pronounced dead on arrival.
7. The accused was escorted to the police station by members of the public. Investigations commenced and the police visited scene of crime and collected the murder weapon to wit' a piece of wood. The accused person was then charged with the offence of murder, which is now substituted with the offence of Manslaughter. A post mortem to reveal cause of death was conducted on 9th February, 2018 at Nakuru Provincial General Hospital. The exhibits are produced in support of the charge as, post mortem report-Exhibit,1 and piece of firewood - Exhibits. the prosecution had no previous records of the accused and she may be treated as a first offender;
8. The accused had from the onset of her trial which was 24th February 2020 been ready and willing to enter a plea of guilty; her behavior showed signs of remorse; from the facts of the case the State was seeking a custodial sentence and proposed that she be granted a term of two (2) imprisonment;
9. In mitigation counsel for the convict associated himself with the prosecution's submissions that the convict in accepting the Plea Bargain Agreement had not wasted the Court's time; she was extremely remorseful and that this was a matter with unfortunate circumstances, the convict is living with a mental health condition Schizophrenia which led to the unfortunate incident, that her bail bond conditions took into account her condition to allow her undergo treatment away from remand custody
10. That the Pre-sentence report is favorable and buttresses the case for a non-custodial sentence.
11. That the Victim and Convict are related, the deceased was a nephew to the convict and that her family has lost the deceased and would not wish to lose their daughter to a custodial sentence; counsel prayed for a lenient sentence of two (2) years preferably a non-custodial sentence on the grounds that the community was not hostile

Analysis

12. It is the duty of this Court to impose a sentence that meets the facts and circumstances of the case; this Court has considered the full circumstances of the offence which is contained in the Facts; The Mental Health condition of the convict is such that she would periodically lose touch with reality, have mood swings, change in perception and thoughts that would require daily medication.
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 for the maximum sentence, that is life imprisonment; this Court has taken into consideration the aggravating circumstances in that the convict used a deadly weapon namely a piece of firewood in committing the offence; but the facts reveal that the killing was not premeditated; the accused in a burst of anger shouted at the deceased that " Kioni and Njoki wako na mashetani " she proceeded to Kick the deceased on the back and he fell, she then picked a piece of firewood and started beating the deceased on the thighs and the head as a result of which the deceased became unconscious leading to the unfortunate state of affairs;



15. The mitigating factors taken into consideration by this Court are that the accused readily pleaded guilty and thus saved on judicial time; also taken into consideration are the personal circumstances of the accused that she has also expressed her remorse and is deemed to be a first offender;

Findings and Determinations

16. I am satisfied that the convict should be given a chance to serve a non-custodial sentence. I noted that the convict indicated to the Probation Officer that she will be willing to serve a Probation term. In the circumstances, I will sentence the convict to a probation term of three (3) years from the date of delivery of this ruling. During this period, she shall be under the supervision of a Probation Officer in Nakuru County. She is cautioned to adhere to the following terms:
- i. The Convict should observe the following: -
 - a. The Convict is warned that Probation sentence is not an acquittal or discharge but a legitimate punishment and therefore she should be careful to diligently serve the sentence as required by the Court and probation.
 - b. She will obey the Probation Officer supervising her and adhere to all the conditions or terms set as part of that supervision.
 - c. She should be of good behavior and not commit any penal offence during the pendency of her sentence.
 - ii. The Convict is warned that failure to abide by any of the terms under 1) above will result in the Convict's arrest and committal to an imprisonment term.

Orders Accordingly.

DATED, SIGNED, AND DELIVERED AT NAKURU ON THIS DAY OF 5TH DAY OF FEBRUARY, 2024.

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S. Mohochi

JUDGE

