



**State v Monyenye (Criminal Case E054 (054) of 2022)
[2024] KEHC 1315 (KLR) (5 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1315 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL CASE E054 (054) OF 2022
TA ODERA, J
FEBRUARY 5, 2024**

BETWEEN

STATE PROSECUTION

AND

INNOCENT ORUONGO MONYENYE ACCUSED

RULING

1. The Accused Person was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. On 27.6.2023, the Parties entered a Plea Bargain Agreement and the same was adopted by the Court. The Accused Person thus pleaded guilty to the lesser charge of manslaughter and was convicted accordingly on 27.6.2023.
3. The facts of the case are that on 10.11.2022 at around 12.30 p.m., the accused person went to his mother's house, the deceased herein. He found the deceased and the house help having lunch. The accused demanded that the house help serve him some food. The house help declined and asked him to serve himself. The accused person proceeded to the kitchen and he took all the ugali that was left and attempted to leave with it. The house help informed him that the food was to be shared with the accused person's brother, who had also not eaten. The house help asked the accused person to leave some ugali for his brother but the accused person declined and went away with the ugali. The deceased, the accused person's mother, intervened and asked the accused person to share the ugali with his brother. The accused person pushed his mother and went with the food to the sitting room. The deceased followed the accused person and an argument ensued because of the food. The accused person told the deceased to shut up or he would beat her. The accused person got upset and picked up a slasher from the house and started hitting the deceased. He hit her several times using the slasher. In the process, he dismembered the deceased's right-hand palm and inflicted multiple cut wounds on her 2 hands and head. He then picked a hammer and hit her on the head after which he threw it down. He



then took an axe from the sitting room and assaulted the deceased and inflicted deep cut wounds on her head. On hearing the commotion, the house help rushed to help the deceased. She got hold of the accused person by his shirt and pulled him back but the accused person turned on her and threatened to deal with her as well. She ran out of the house screaming and called for help from the neighbours. The neighbours arrived. The accused person left the house holding the blood-stained slasher. He cleaned it using the water from the water tap right outside the house. He threw the slasher into the grazing field and went to his house. The members of the public only arrested him as he tried to escape. They beat him up and took him to Nyatieko Police Station where he was re-arrested and booked. He was taken to Iranda Health Centre where he was treated and discharged. He was detained at the police station. In the meantime, the neighbours rushed the deceased to the Kisii Teaching and Referral Hospital but she died the same day while undergoing treatment. A post-mortem was conducted and the cause of death was established as head injury through skull fracture and brain laceration due to injury with a sharp object due to assault. The accused person was charged with murder which was later reduced to manslaughter contrary to Section 202 of the Penal Code as read together with Section 205 of the Penal Code pursuant to the plea bargain agreement which was signed by the accused person and his counsel on 8.3.2023 and Mr. Brian Ayodo for the prosecution on 14.3.2023.

4. The post-mortem report was produced as exhibit 1.
5. The accused person confirmed that the facts were correct and he was convicted of the offence of manslaughter.

Mitigation

6. Mr. Mariita for the accused person submitted that the accused person was a middle-aged man and prayed that he be given a chance to lead a normal life. He did not have a premeditated intention to kill his mother and her death was an unfortunate incident which he regretted. He entered the plea bargain agreement to save the court's time and resources. He was a first offender. He informed the Court that his siblings had forgiven him and they were willing to accept and reintegrate him. He urged the Court to grant the accused person a non-custodial sentence.
7. Mr. Ochengo submitted that the accused person was a first offender and left the sentencing to the court in light of the plea bargain agreement.

Determination

8. I have considered the matter, the plea bargain agreement, the facts of the case and the accused person's mitigation.
9. Section 202 of the Penal Code provides thus:
 202. Manslaughter
 - (1) Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter.
 - (2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.
10. Section 205 of the Penal Code provides thus:
 205. Punishment of manslaughter



Any person who commits the felony of manslaughter is liable to imprisonment for life.

11. It is trite law that life imprisonment is reserved for the most extreme cases. I am also alive to the fact that the Court of Appeal in the case of *Manyeso v Republic* (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023) (Judgment) declared that life imprisonment is unconstitutional.
12. I am also alive to the recent Court of Appeal decision in *Evans Nyambari Ayako v Republic* Criminal Appeal No. 22 of 2018 where it was held that life imprisonment translates to thirty years' imprisonment.
13. It is inconceivable really that the accused person would end the life of his own mother in such a gruesome and macabre manner and over a plate of ugali nonetheless! From the evidence on record, there does not appear to be any provocation or other matter subsisting at the time that would warrant the vicious attack on the deceased.
14. I have considered the pre-sentence report on record. The same is not favourable at all to the accused person. According to the said report, the home environment is not conducive to his release. His 2 siblings stated that he is difficult to deal with. One of the siblings spoke of an incident in 2019 when he slapped her and he picked his slasher but his brother and neighbours held him back and called the authorities. He stayed in remand for 3 weeks and ironically, his now deceased mother, intervened and the case was withdrawn. He was hospitalized in Mathare Hospital for rehabilitation for drug addiction but nothing has changed. The accused person is separated with his wife on account of his drug abuse. His 2 siblings separately take care of his 2 children. The public is also bitter and it would be safer for him to be detained. One of his siblings also expressed fear for her life should he be released. Moreover, when was detained at Nyatioko Police Station, he had to be transferred to Nyanchwa Police Station because the public was threatening to torch the police station.
15. In the circumstances, I find it difficult to believe the accused person's counsel's submission that the siblings had forgiven the accused person and were ready to integrate with him.
16. The manner in which the accused person killed his mother is evidently grisly. He assaulted her with a slasher to the point that he dismembered her right arm palm. As if that was not enough, he hit her with the slasher on the head. He then took a hammer and hit her using it. To make matters worse, he took an axe and proceeded to inflict deep cut wounds on the side of her head. He would not stop assaulting her even with the house help pleading with him. The neighbours kept a safe distance afraid for their own lives. The accused person was only arrested as he tried to escape which speaks further to his state of mind at the time.
17. His siblings are not amenable to his reintegration back home and the community.
18. What sentence would be commensurate in the circumstances?
19. The principles underpinning the sentencing process as laid out in the Sentencing Guidelines (2023) are:
 1. Proportionality
 2. Equality/ Uniformity/ Parity/ Consistency/ Impartiality
 3. Accountability and transparency
 4. Inclusiveness
 5. Totality of the sentence



6. Respect for human rights and fundamental freedoms
 7. Enhancing compliance with domestic laws and recognized international and regional standards on sentencing
20. The objectives of sentencing are:
1. Retribution
 2. Deterrence
 3. Rehabilitation
 4. Restorative justice
 5. Community protection
 6. Denunciation
 7. Reconciliation
 8. Reintegration
21. In the case of Republic v Japheth Oronyi Auka [2020] eKLR, the accused person was sentenced to 25 years' imprisonment for the offence of manslaughter. The Court noted that the accused person therein was a young person but he had used a deadly weapon (panga) to murder the deceased.
22. In Anyanje v Republic (Criminal Appeal 45 of 2017) [2023] KECA 880 (KLR) (7 July 2023) (Judgment), the Court of Appeal sentenced the accused person to 30 years' imprisonment. In that case however, the accused person was charged and convicted of the offence of murder. However, the Court of Appeal noted that the appellant therein killed his grandfather in a most gruesome manner by banging his head against a wall, hitting him with a fimbo because his grandfather had apparently declined to give him land.
23. I have considered Mitigation of accused, that the accused person pleaded guilty upon entering into a plea bargain and thus saved judicial time of this court, the nature of the offence, the relationship between accused and deceased, the remand period, also that the accused person is a fairly young man, 36 years of age. I also note that he has 2 young children, who are in the care of his siblings. However, a life has been lost. The accused person has deprived his siblings of a parent, his father of a spouse and companion, his children, nieces and nephews of a grandparent. Worse still, there appears to be no reason or provocation that made the accused person act in the manner he did. I have also looked at the presentence report which recommends a non -custodial sentence for his rehabilitation and security as the community is still bitter with him and may lynch him. The accused herein is thus not fit for a non-custodial sentence but a custodial sentence.
24. , Considering the foregoing and guided by the case of in Francis Karioko Muruatetu & another – v- Republic SC Petition No. 16 of 2015 where the Supreme Court held that mandatory death sentence prescribed for the offence of murder by Section 204 of the Penal Code was unconstitutional, i find that a sentence of 7 years would be appropriate in this case . I proceed to sentence the accused person to serve seven (7) years imprisonment.
25. 14 days Right of appeal.

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

TERESA ODERA



JUDGE

In the presence of:

Mr. Justus Ochengo for the State.

For the Accused Person

Alex Oigo - Court Assistant

