



**Republic v Muthike (Criminal Case 11 of 2015)
[2024] KEHC 2819 (KLR) (14 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2819 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 11 OF 2015
RM MWONGO, J
MARCH 14, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

JAMES KINYUA MUTHIKE ACCUSED

JUDGMENT

1. This is an old matter, wherein the accused was charged with murder on 8th June, 2015. He was remanded in custody from that date. On 2nd July, 2015 he pleaded not guilty to the offence. There were delays in hearing the case, until 18th July 2019, when two prosecution witnesses were heard.
2. Unfortunate delays again encumbered the hearing, including the illness of the Judge in charge of the station.
3. On 29th May, 2023 the defence proposed a plea bargain agreement. The matter was given a date for Plea Bargain Agreement settlement on 28th November, 2023 to give the parties time to consider the proposal. On 7th December, 2023, the parties availed the signed Plea Agreement pursuant to Section 137A (i) and 137B of the [Criminal Procedure Code](#).
4. The Plea Bargain Agreement dated 7th December, 2023 was adopted by the court pursuant to Section 137G of the [Criminal Procedure Code](#). Further, the court was satisfied that the accused had understood the contents and that he had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion.
5. Together with the Plea Bargain agreement, the prosecution had provided the summary of facts that the prosecution would have proved had the matter gone for full trial. These were set out as follows: that on 27th May, 2015 at Mukinduri Trading Centre in Kirinyaga Central Sub-County at about 8.00 pm the accused and the deceased finished drinking a local brew and returned home. On reaching home, the accused instructed the deceased to cook for him but she refused and slept. Infuriated, by the deceased



- action, he beat her up and retired on the same bed out of exhaustion. The following day he did his daily chores of cutting tree for frame production and went out to drink alcohol. He returned home and the deceased in bed and unresponsive. The body of the deceased was picked by the police from Kerugoya.
6. The post-mortem report dated 3rd June, 2015 indicates that the deceased died due to internal bleeding caused by hemopneumothorax.
 7. Accordingly, on 7th December, 2023, the court convicted the accused with the offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. A mitigation hearing was then fixed, the court having previously ordered a Probation Officer's Presentence report, which had been availed.
 8. At the mitigation hearing, the defense counsel made the following submissions. That the accused was a 1st offender and remorseful. He is a family man aged 48 years old. The deceased is his 2nd wife. The 1st family has 4 children and he is the breadwinner. His last-born child is in grade 7. The victim's family have healed. He has been in custody for 8 years. The local administration is not opposed to a non-custodial sentence. 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. Further, the probation report is favourable. The Probation Officer proposed a non-custodial sentence.
 9. The prosecution submits that the 8 years served in prison can be considered. They are seeking for a 13 years' sentence. Further, that the accused to be placed on a program to handle his drunkenness and anger.
 10. The only issue is what sentence should be meted on the accused.

Analysis and Determination

11. The Probation Report indicates that the accused is 48 years of age. His father died in 2019 while his mother died in 1989. His father did not remarry. He is the first born among 5 siblings. The family land is about $\frac{3}{4}$ of an acre and there is a succession cause involving it pending in court.
12. The accused dropped out of school in class 2 on his own volition. He engages in casual labour in the village. He is married and has four children. He separated with the 1st wife after he brought the deceased to be his 2nd wife. His dwelling house was torched by angry villagers after the body of the deceased was discovered in the house.
13. The community's views of the accused are that he is not considered 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 he took over in caring and providing for the younger siblings. The community believe that he has reformed during the 8 years in remand custody. The victim left behind 4 adult children. They had forgiven the accused and were not opposed to non-custodial sentence.
14. The Probation Report recommended the accused for a non-custodial sentence and recommends Community Service Orders for him to work at Kiangungu Primary School.
15. 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’
16. The section provides for the maximum sentence that is life imprisonment; this court has taken into consideration the aggravating circumstances in that the convict murdered the victim by hitting her on the ribs causing loss of air and internal bleeding.



17. The supreme Court decision in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR established the mitigating circumstances to be considered before sentencing:

“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

18. I have taken all the above matters into consideration, including the fact that during the whole tenure of these proceedings, the accused was held in remand custody. That is a period of 8 years and 9 months. In my view the accused satisfies the criteria for a reduced sentence from the maximum life imprisonment.
19. Accordingly, the sentence I consider apt is as follows: I sentence the accused to serve 18 years imprisonment to be reckoned as follows:
- a. Of the 18 years the accused is entitled to a one-third remission of his sentence under the Prison Act; meaning that 6 years will be deducted, leaving 12 years;
 - b. Of the remaining 12 years the court must take into account the 8 years and 9 months the accused has spent in custody pursuant to section 333(2) of the *CPC*. This leaves 3 years and 3 months to be served;
 - c. The accused will serve an imprisonment term for three (3) months after which he will serve a non-custodial sentence of three (3) years during which time he shall be on probation under the Probation Officer and shall serve community service at Kiangugu Primary School;
 - d. During those final three (3) years the accused shall attend counselling and rehabilitation programmes designed and facilitated by the Probation Officer and record of his attendance shall be maintained.
 - e. Should the accused fall afoul of the law and be convicted during those three (3) years, the Court shall be informed and it may alter and increase the sentence herein.
20. Orders accordingly.

DATED AT KERUGOYA THIS 14TH DAY OF MARCH, 2024



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R. MWONGO

JUDGE

Delivered in the presence of:

Accused: Present in Court

Ngigi: for Accused

Maari: State Counsel

Murage, Court Assistant

