



**Republic v Maina & another (Criminal Case E008 of 2022)
[2024] KEHC 2292 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2292 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE E008 OF 2022
CW GITHUA, J
MARCH 6, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ESTHER WARUINO MAINA 1ST ACCUSED

PETER KAMAU MWANGI 2ND ACCUSED

RULING

1. The two accused persons, Esther Waruino Maina and Peter Kamau Mwangi were charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).

2. The particulars were that on 17th March, 2022 at Gitweku village, Kahuro Sub-County within Murang'a county, they murdered Evanson Wamburi Mbaru.

Both accused persons denied the charges but were later convicted on their own plea of guilty with the offence of manslaughter under a plea bargain agreement dated 30th March 2023.

3. The brief facts of the prosecution case are that the deceased and the first accused (accused 1) were lovers and on 17th March 2022, they were both drunk and were at Bypass bar in Gitweku village when a fight erupted between them. Accused 1 took a stone and hit the deceased with it on the face before she started walking away towards her home. The deceased followed and confronted her as she was opening her door. He picked a metal rod outside her house and attacked her with it.

Accused 1 fought back while at the same time screaming for help. Her neighbour, 2nd accused went to her rescue armed with a wooden stick.

He joined accused 1 in attacking the deceased. The deceased fell in a nearby banana plantation and each accused left to their respective homes.



4. On the following morning, the deceased's body was discovered by a roadside. The area chief was informed and thereafter the police. Investigations started and the deceased's body was taken to Murang'a Level 5 Hospital mortuary. An autopsy was conducted and the cause of death was established to be head injury secondary to blunt force trauma consistent with physical assault.

After investigations, both accused persons were arrested and charged with the offence of murder which was subsequently substituted with the offence of manslaughter.

5. In mitigation on behalf of each accused person, their learned counsel Ms Waititu informed the court that accused 1 was a single mother of a child aged 11 years. She was an orphan who was the breadwinner of two brothers who were living with disability. One of them was mentally ill while the other was deaf. The two brothers were currently relying on well-wishers for their upkeep.

6. Further, Ms Waititu submitted that both the deceased and accused were drunk at the material time and both accused persons did not intend to kill the deceased.

As for accused 2, it was pleaded that he was a family man who was the sole bread winner for his family of one wife and two children.

She prayed for a non-custodial sentence for each accused.

7. This court called for pre-sentence reports for both accused persons which were filed on 27th February, 2024. The pre-sentence reports confirm that the circumstances under which the deceased met his death were as presented to the court by the prosecution. The social inquiries made by the probation officer as detailed in the reports show that the victim's family who knew about the romantic relationship between the deceased and accused 1 believed that both the accused persons were genuinely sorry for having participated in actions that led to the deceased's death and they had forgiven them.

Members of their community spoke positively about them and were happy to have them integrated back into their community.

8. Having considered the facts of this case and the circumstances under which the accused persons committed the offence, I find that the deceased was the aggressor given that he attacked accused 1 first and accused 1 was at the material time acting in self defence. Accused 2 who was her neighbour was attracted to the scene by accused's screams and had gone to her rescue.

It is apparent that none of the accused persons intended to kill the deceased and that the deceased's unfortunate death was the outcome of a brawl between two intoxicated lovers.

9. Granted, manslaughter is a serious offence which attracts a maximum sentence of life imprisonment and this is an important consideration in determining the appropriate sentence to be imposed in each case. However, the court is enjoined to consider other mitigating and aggravating factors before deciding on an appropriate sentence.

10. I have considered the plea in mitigation offered on behalf of each accused particularly the fact that the accused persons are first offenders, their family circumstances and their apparent respective ages.

I have also noted that they have been in lawful custody since 19th April, 2022 and their claim that they have learnt their lesson and now want to turn their lives around is credible and probably true.

11. Having taken all relevant factors into account, including the circumstances under which the offence was committed, it is my finding that a custodial sentence would be inappropriate in this case as it is not likely to meet the objectives of sentencing. I am satisfied that a non –custodial sentence would be more suitable in this case.



12. Consequently, each accused is sentenced to probation for a period of three years.

The accused persons are hereby warned to comply with all the conditions set by the probation officer to facilitate their rehabilitation.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 6TH OF MARCH, 2024.

C.W GITHUA

JUDGE

In the presence of:

Both accused persons.

Mr. Kirubi holding brief for Mr Mwaniki for both accused.

Ms. Nzuki for the State

Ms. Susan Waiganjo Court Assistant

