



**Republic v Thumbi (Criminal Case 64 of 2015)
[2024] KEHC 3699 (KLR) (18 April 2024) (Sentence)**

Neutral citation: [2024] KEHC 3699 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 64 OF 2015
PN GICHOHI, J
APRIL 18, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSEPH MAINA THUMBI ACCUSED

SENTENCE

1. Joseph Maina Thumbi (herein referred to as the Accused) was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that on the night of 12th and 18th day of October 2015 at Barnabas Trading Centre in Nakuru District within Nakuru County murdered George Wambugu Kabiru.
2. He pleaded “Not Guilty” to the charge and the matter proceeded for hearing. After four witnesses testified, parties entered into a plea bargain which they signed on 16th January 2023.
3. On 13th July 2023, and upon the Court being satisfied that the Accused person understood the plea bargain, proceeded to have accused plead to the charge of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The Particulars of the offence were that on 18th day of October 2015 at Barnabas Trading Centre in Nakuru District within Nakuru County unlawfully killed George Wambugu Kabiru.
4. The facts were that on 18th October 2015 at around 19.00 hours, the deceased George Wamburu Kabiru wanted to eat a meal at Accused’s butchery. Accused was preparing Kachumbari . He saw the deceased was interfering with his work and requested the deceased to move to another table. The deceased refused to move. A quarrel ensued and they exchanged blows.
5. The Accused person overpowered the deceased and he took the knife he was using to prepare Kachumbari and stabbed the deceased on the stomach. Members of the public intervened and the



- deceased was taken Fountain Dispensary for first aid . He was referred to Provincial General Hospital Nakuru where he died while undergoing treatment.
6. Members of the public locked the Accused person inside the store and handed him over to the Police. The Police Officers took him Mwariki Police Station and Charged with Murder. The knife was taken as Exhibit
 7. Post mortem was done on the body and the doctor opined that the cause of death was excessive bleeding due to a vascular injury of a single stab arising from a sharp forced trauma on the abdomen.
 8. The Accused person was subsequently charged with the offence of Murder which was later reduced to Manslaughter. The Post Mortem Report was produced as P Exhibit 1.
 9. The Accused person admitted charge and the facts. He was convicted.
 10. The Prosecution did not have previous records and therefore opted to have him treated as a first offender.
 11. In mitigation, Ms Achieng for the Accused person urged the Court to consider that the Accused person was aged 32 years, is married with one child, has been in custody since 2015 and that he was remorseful.
 12. In the circumstances, the Court called for a pre- sentence report which was duly filed on 1st February, 2024. The highlights of the detailed report are that the Accused did not have previous convictions and was remorseful and pleads for leniency. He has spent eight years in remand. The inquiry report revealed that the accused and deceased were friends and workmates.
 13. The Probation Officer also established that the Accused's family had approached the deceased's family for reconciliation but it did not take off due to the bitterness that existed after they lost their son then aged only 22 years.
 14. However, the deceased's father seemed to appreciate reconciliation at the time of the report. In the circumstances Probation Officer recommends a non- custodial measure so as to enlighten the Accused on dispute resolution mechanisms, ensure he relocates from the area of commission of the offence to the rural home where his family could support his alternative rehabilitation if he is given a chance.
 15. For those reasons, the Probation Officer recommends a Probation Sentence for a period of three years.
 16. The sentence provided for under Section 205 of the Penal Code is life imprisonment. However, life imprisonment has since been declared unconditional paving way to a determinate sentence.
 17. Further, this Court has considered the circumstances under which this offence was committed, that the Accused person has pleaded guilty to the charge , he is treated as a first offender and has been in custody since October 2015. Though it is unfortunate that the deceased lost his life at that early age, this Court finds a custodial sentence inappropriate in the circumstances and no reason to depart from the recommendation by the Probation Officer.
 18. Consequently, the accused person is placed on probation for a period of Three (3) years. Right of Appeal 14 days.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 18TH DAY OF APRIL , 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:



Mr. Kihara for the State

Accused person

Ms Achieng for Accused person

Ruto, Court Assistant

