



**Republic v Wainaina (Criminal Case 11 of 2018)
[2024] KEHC 3572 (KLR) (Crim) (11 April 2024) (Sentence)**

Neutral citation: [2024] KEHC 3572 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 11 OF 2018
LN MUTENDE, J
APRIL 11, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

PAUL MATIRU WAINAINA ACCUSED

SENTENCE

1. The Accused, Paul Matiru Wainaina 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 are that on 29/1/2018 at about 10:50 hours at Grogon A area in Kariobangi North estate within Nairobi County the accused murdered Hannah Wanjiru Gitau (deceased)
2. At the outset the accused denied the charge, but five(5) years later he entered into a plea agreement with the State whereby he pleaded guilty to the lesser charge of Manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code* as per the agreement filed in this court on 25/7/2023 .
3. The facts of the case are that, the accused is the last born of Peter Wainaina and Tabitha Nyaguthi who are both deceased and the deceased was his paternal grandmother. Having been orphaned at the age of six (6) years he was taken to different children homes. He managed to get a foreigner who sponsored his college education at Catholic university and on completion of his Bachelor's degree in the year 2004 at the age of 24 years, the accused was accommodated at one of his grandmother's rental houses in Grogon A area. While there the accused continued to such searched for employment.
4. On the fateful day the accused was requested by the deceased to do some repair works of one of the rental houses. The two later quarreled when the deceased inquired why the accused had delayed in getting out of /vacating the house leading to the deceased hitting the accused with a stick.



5. The accused retreated back to the house for 20 minutes, he later met the deceased standing outside his house with a knife in her hands which she used to stab him stating that the accused: “could as well follow his late parents.”
6. That a struggle ensued after which the accused grabbed the knife from the deceased and turned on her with rage stabbing her on the neck, shoulder and back.
7. The deceased fell down profusely bleeding as she called for help. That the deceased was found lying unresponsive and in a pool of blood, while the accused was about 50 meters from the place of the incident with blood all over his clothes, hands and feet. He was arrested by members of the public and was subjected to mob justice but was rescued by police officers from Kariobangi police station who were on patrol duties within Grogon A area. The murder weapon, a knife was also recovered at the place of arrest.
8. The postmortem conducted on the mortal remains of the deceased established that she had multiple stab wounds on her neck, shoulder and back. The cause of death was strangulation due to penetrating sharp force trauma.
9. The accused DNA was collected through blood stained T-shirt, knife, clothes and nail clippings which were compared with the DNA from the deceased and as per the government chemist report dated 20th May, 2018 the samples of DNA generated from the accused and those of the deceased; a mixed DNA profile matched.
10. The accused is a first offender. It was submitted that he is deeply remorseful and that what happened was not intended. That he was orphaned at a young age and rejected at the age of six (6). Further, that he is a middle aged man with a college degree and prays to be given a second chance to exercise his skills. Additionally, that the court considers he lived with the deceased for 6 years without bad intention. He has been in custody for 6 years, is a rehabilitated, has done bible study and can manage stress. He asked to be granted a non- custodial sentence.
11. The State reiterated that the court considers the gruesome nature of the offence committed and that the deceased was an old lady who did not deserve to die as she did.
12. The presentence report filed indicates that the accused was born and bred in Nairobi but experienced a difficult childhood following his parents demise and his growing up in a Children home. He was in the streets for a year and managed to get a sponsor Daniel Marore who took him to Emmanuel’s boys shelter and enrolled him in a secondary school and later university.
13. The accused engaged in casual labour doing odd jobs within Korogocho and was single at the time of arrest. He used marijuana during the duration before his arrest but was a teetotaler.
14. He pleaded for leniency on the ground that he has learnt his lesson.
15. The victim’s views were represented by the accused paternal uncle, David Waruinge, who stated that although the offence was an accident, the offender should go through the justice system, it is hard to accept him back and he is not safe in the presence of the offender.
16. His maternal uncle, Njoroge, acknowledges the magnitude of the offence but advocates for release on a non-custodial sentence considering his young age. He terms the incident as having been unfortunate, that the accused deserves a second chance to make amends. He also expressed willingness to take him in upon his release.



17. The community views were as per the area neighbour who indicated that the accused was neglected and had pent up emotions that escalated to the deceased demise. The local administration was willing to assist him in his rehabilitation and noted that the accused has a permanent place of abode at his parent's house where his uncle resides.
18. The children home records show that the accused was reserved and well behaved, there was no report of truancy during his stay. The accused brother stated that their childhood was not easy and that they spent in the cold away from family. The accused was only taken in after his graduation and he would take up odd jobs to fend for himself He was also willing to take him in.
19. The probation officer recommends a non- custodial sentence noting that the accused came from a dysfunctional family due to lack of parental care which was escalated by drug abuse.
20. Following the plea agreement, this court is enjoined under Section 137 of the [Criminal Procedure Code](#) (CPC) as read with the rule 11 and 12 of the Criminal Procedure Plea bargaining rules of 2018 to determine the appropriate sentence.
21. In exercise of this discretion, I do consider the aggravating and mitigating factors and the objectives to be achieved. Each case has its peculiar circumstances but general principles are that the sentence should be commensurate to the offence and the circumstances of the case in totality.
22. In the case of *Omuse v R* (2009) KLR 214, the court held that:

“...sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and the proper exercise of discretion in sentencing requires the Court to consider that fact and circumstances of the case in their entirety before settling for any given sentence.”
23. Proportionality is also a key principle to ensure that the offender is adequately punished, Paragraph 3.1 (f) of the Judiciary Sentencing guidelines refers to the principle of proportionality where it provides that:

“The sentence meted out must be proportionate to the offending behaviour. The punishment must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behaviour is weighted in view of the actual, foreseeable and intended impact of the offence as well as the responsibility of the offender “
24. In the case of *R v Scott* (2005) NSWCCA 152 Howie, Grove and Barr JJ stated:

“There is a fundamental and immutable principle of sentencing that this sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed in the circumstances of the crime committed...One of the purposes of punishment is to ensure that an offender is adequately punished...a further purpose of punishment is to denounce the conduct of the offender.”
25. It is notable that retributive and deterrence punishment must also be balanced with the need to rehabilitate the accused and ensure his social adaptation upon his release .
26. According to Section 205 of the [Penal Code](#) a person who is guilty of Manslaughter is liable to serve life imprisonment:



27. Following the social inquiry carried out, the Probation Officer recommended a non- custodial sentence.
28. The accused and the deceased were related and therefore the victim's assessment refers to close relations. Both uncles interviewed admit that it was an accident and from the facts, the offence was caused by a spur of emotions, and an element of provocation was present. The accused acted in self -defence since the deceased had the knife and attacked him.
29. The aggravating factors are revealed in the manner which the accused upon snatching the knife acted in rage and stabbed the deceased several times.
30. The mitigating factors on the other hand are that, the accused's lost his childhood growing without parental care, being unable to benefit from his parent's inheritance which has been explained to be the cause of his outburst and rage. At the time of the act the accused was a 24 year old graduate. He is stated to have benefitted from sponsorship which saw him achieve a Bachelors degree, unfortunately he is yet to get employment and achieve his potential.
31. He was well behaved during his stay at the children home. There is no report from the prison and the community of any previous offence or subsequent conduct that would prevent him from benefiting from leniency.
32. In such offences, courts have meted out both custodial and non- custodial sentence but leniency has been applied where there is evidence that the death was not intended and where the accused is remorseful and has spent many years in remand custody.
33. In the case of *Peter Mulwa v R* (1982) eKLR the accused was attacked by the deceased after they had an argument at a bar. A struggle ensued and the appellant kicked the deceased once, no weapon was used. The deceased complained of pain the next day and later died in hospital of what was termed as general septic petronitis following a surgery. The appellant was convicted of manslaughter plea and the court found that the appellant had retaliated excessively in kicking the deceased in the manner that he did sentenced him to 2½ years imprisonment. The court of appeal found that the sentence was excessive and further found that the accused had already served 24months which was sufficient time. The court of appeal held that, the appellant had received a grave and sudden provocation and had only kicked once the deceased during a struggle in which no weapons were used. That he was not the aggressor and there was no premeditation on his part; having been attacked, it would appear that he was acting out of self defence. He was released on a 2 year non- custodial sentence .
34. In the case of [*Republic v Stanley Njau Kamau*](#) [2021] eLR the accused was released on a 3 year probation period.

He had been losing his firewood and on the date of the offence caught the deceased stealing red handed. A fight ensued out of which the deceased was severely injured and succumbed much later. The court found that he was provoked but force used was excessive leading to the deceased death. The court considered that his remorsefulness, the circumstances of this offence, the accused's mitigation, the pre-sentence reports and the time spent in custody .The court also found that the accused saved the court's time and resources by pleading guilty to the lesser charge of manslaughter.
35. In this case though the accused was not the aggressor, however considering the act of continuous stabbing the deceased was an act calling for rehabilitation and reintegration in the family and community at large.
36. I do note that the accused has been incarcerated for a period of six (6) years, in the premises in addition to that sentence he will now be released to be under Probation supervision for a period of three (3)



years to enable the him get adequate guidance and counselling and also to rebuild his life with the help of his surviving family members.

37. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 11TH DAY OF APRIL, 2024.

L. N. MUTENDE

JUDGE

In the presence of:

Accused

Ms. Dela for the State

Court Assistant – Gladys

