



**Republic v Murwanjira & another (Criminal Case E001 of 2022)
[2024] KEHC 5651 (KLR) (21 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5651 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE E001 OF 2022
RM MWONGO, J
MAY 21, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

DENNIS KANYI MURWANJIRA 1ST ACCUSED

MICHAEL KINYUA NJIRAINI 2ND ACCUSED

JUDGMENT

1. The Accused persons are charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that they jointly with others not before the court on 30th December 2021, at Matandara village CMM Mathangauta Sublocation Kangata Location in Kirinyaga County, murdered Dominic Munene Gichobi.
2. On 26.1.2022 when they were arraigned in court, they pleaded not guilty. Both were granted bail bond. On 7.2.2024 the issue of a Plea-Bargaining Agreement arose and parties were granted time to conclude or hearing to proceed.
3. On 11.4.2024 the parties had executed a Plea-Bargaining Agreement. The statements of facts therein; and as further explained to the court by the DPP, was that the 1st accused discovered burglary in his bar (Shark Pub) on 30.12.2021 and found several items stolen.
4. Whilst assessing the damage/loss he received information that he deceased was amongst the burglars. He boarded a Boda Boda and went to Ngurubani where he met with a group of about 10 others where they tortured the deceased.
5. In the process of the melee, the 1st Accused together with the 2nd Accused went to pick others who were mentioned as accomplices and brought them to the place where the deceased was; at which point a



- person (Abel Murimi Muthike) who also disclosed he had bought some of the stolen beers/items and, fearing for his life returned them.
6. Following the mob confrontation, the deceased was found dead in his house and the matter was reported to the Police. He had been assisted to his house by one Annah Nyambura Mugo when she realized that he had suffered injuries. The following day when she checked on him, he was lying motionless.
 7. The evidence available does not disclose who killed the deceased, but there is evidence that the mob that confronted the deceased had left him injured.
 8. The Post Mortem Report indicates that the cause of death was massive internal bleeding following blunt trauma in an assault.
 9. The state thus entered into a PBA with the two Accused persons, who conceded that they could be responsible for the lesser offence of manslaughter as they had acted out of provocation resulting from the burglary.
 10. The PBA was signed by the police and adopted by the court after:
 - a) the court was satisfied that both Accused had signed /entered into the sane voluntarily.
 - b) being of sound mind; and
 - c) that they understood their rights under Section 137 of the Criminal Procedure Code.
 11. The court then convicted the two accused persons for the offence of manslaughter and since the Probation Officer had filed reports, the two accused persons gave mitigation through counsel immediately thereafter.
 12. I have considered the mitigation proffered by counsel on behalf of both accused persons. Accused 1 is aged 41 and has a young family with a child aged 2 ½ years and is the sole bread winner. Similarly Accused 2 has a young family of two children aged 3 and 5 respectively and is also the sole bread winner.
 13. The Probation Officer's Reports in respect of each accused recommend a non-custodial sentence during which each accused should receive counselling on anger management and conflict resolution, and that they be placed under a community service programme at Tebere Secondary School.
 14. The state supports the Recommendations of the probation Officer.
 15. The court has noted the victim's family's views in the Probation Reports. In particular it noted that the deceased appeared to live a solitary life with minimal association with his family or relatives. The victim's mothers and sister indicate that the deceased was years old and unmarried and without children; that he had left home and carried on casual jobs in his new location. They had no grudge or bitterness towards the offender and left the matter to the court.
 16. The court has taken into account the mitigation, the Probation Report, the Judiciary Sentencing Guidelines, and particular, the objectives and purposes of sentencing.
 17. A court does not consider that this is a case where a custodial sentence will achieve much in the circumstances, and given the manner in which the offence occurred and the circumstances therein.
 18. Accordingly, the court sentences both accused as follows:
 - a) To a non-custodial sentence of three (3) years during which period they will engage in community service at Tebere Secondary School under the supervision of the Probation Officer.



- b) The Probation Officer will make a programme of counselling for both Accused on anger management and conflict resolution and shall facilitate the same for both Accused who shall be released to attend the said programme and the Probation Officer shall maintain a record thereof which may be called for by the court at any time.
- c) Should the Accused persons or any of them fail to abide by the instructions or direction of the Probation Officer or of a person deputed by him, or fall afoul of the law and be convicted with any offence, the sentence herein shall forthwith be reviewed by the court.

Order accordingly.

Dated at Kerugoya this 21st day of May, 2024

R. MWONGO

JUDGE

Delivered in the presence of:

Dennis Kanyi Murwanjira Accused 1

Magara for the Accused

Mamba for the State

Murage, Court Assistant

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