



State v Mwangi (Criminal Case 48 of 2017) [2024] KEHC 7531 (KLR) (24 May 2024) (Ruling)

Neutral citation: [2024] KEHC 7531 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 48 OF 2017
DO CHEPKWONY, J
MAY 24, 2024**

BETWEEN

STATE PROSECUTION

AND

JOYCE WAMUYU MWANGI ACCUSED

RULING

1. The accused Joyce Wamuyu Mwangi was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) Cap 63 Laws of Kenya.

The particulars of the offence are that:-

“On the 18th day of October, 2017 at Githurai 44- Kiangirichi area within Ruiru Sub county in Kiambu County the accused murdered Damian Maina”.

2. On 25TH March, 2018, the accused pleaded ‘Not Guilty’ to the offence of Murder. Later, the accused sought for and was granted a plea bargain wherein the agreement was executed as between the parties on 20th September, 2023. The charge of murder was substituted with a lesser charge of Manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#). The accused person pleaded ‘Guilty’ to the offence of Manslaughter on 5th October, 2023,
3. The facts of the case are that on the material date of 18th October, 2017 at around 1500 hours, the deceased one Baby Damian Maina who was aged 11 months was playing with other children at their plot when the accused who also resided in the same plot grabbed and went to her house where she locked herself with him from the inside. The deceased had been left under the care of a neighbour identified as Angie Nasibure who went and asked the accused to open the door but she refused. The said neighbour then went to call the baby’s mother who was working in a salon and they both came back to ask the accused to open the door but she refused.



4. The matter was reported to Githurai Police Post by the deceased's mother and the neighbour and two police officers accompanied them back. That when they got to the accused person's house, they found her throwing things out of the window while the deceased was crying inside the house. The police forced their way inside the house and found the deceased had already died as the accused had hit him with a 6 kg gas cylinder. That the Accused person was immediately arrested and escorted to Kiamumbi police station and was later transferred to Kiambu Police Station.
5. That the deceased was taken to Kenyatta Hospital Mortuary where post mortem examination was conducted by Dr. Johassen Odour who formed the opinion that the cause of his death was head injury due to forced blunt trauma.
6. The accused was charged in court for the offence of murder but later she entered into Plea Bargain Agreement dated 20th September, 2023 for the offence of Manslaughter to which she pleaded 'guilty.'
7. The matter was referred to the Probation and after Care Services for the social inquiry to be conducted on the accused and a pre-sentence report be filed in court. The Pre-Sentence Report was filed in court on 2nd November, 2023, and it indicated that after conducting an inquiry of the accused from the accused family, community and victim's family the Probation Officer had established that the accused who readily admitted the commission of the offence, suffers from Bipolar Mood Disorder, a psychiatric condition diagnosed in 2012 and her episodes usually triggered by severe anxiety . it was reported that at the time of committing the offence, the accused was in a manic state of mind whereby she was throwing things including a Meko gas cylinder which hit the deceased who she later learnt had died. The accused is said to regret the commission of the offence, is remorseful and pleads for forgiveness from the deceased's mother and for the court to pardon her.
8. The inquiry showed that the accused had first been admitted at Mathare Teaching and Referral Hospital for two months whereby she had an inpatient number as well as an outpatient number as she attends clinics for review every two months and had been on mood stabilisers (Olazapine) to help her maintain a balance and avoid extreme polarities.
9. The report has stated that the Accused is a single parent and had left her child in the custody of her sister who has been taking care of her . It stated that the family of the accused has been supportive of her treatment process in that stigmatising her psychiatric condition. It goes on to state that the family of the victim have comes to terms with the fact that the accused has a problem and acted out of factors beyond human control and therefore have no hostility towards her.
10. The findings of the inquiry was that the home environment is conducive to support the accused's treatment and psychosocial support. The Probation Officer confirms that it is ready to work closely with the accused's family to support her adherence to medication as a deterrence to further offending and states that the accused's psycho-social needs will include adherence counselling and promote better anxiety management or emotional regulation.
11. The probation officer has recommended that the accused is suitable for a non- custodial form of supervised sentence and it proposes a 3 year probation order subject to the discretion of the court.

Analysis and Determination

12. The court has considered the facts of the case, the records of Accused as presented by the prosecutor and the recommendation in the presentence report and notes that through the heinous actions of the accused, an innocent eleven (11) months old child lost his life. It is worth-noting that life is a sacred and terminating one's life cannot be taken for granted or trivialized.



1. The sentence for a charge of Manslaughter is provided for under Section 205 of the [Penal Code](#) as follows:-

“ Any person who commits the felony of manslaughter is liable to imprisonment for life.”
13. Be that as it may, the court has read through the confession by the Accused and the Psychiatrist’s report dated 2nd October, 2018 and notes that, while it highly condemns the accused’s actions, the Accused had a mental illness having developed the psychiatric illness in 2012 which has progressed over the years. The psychiatric opinion was that the accused suffers from a mental disorder most likely bipolar mood disorder with a differential of schizoaffective disorder since 2012 and that compliance to treatment has been erratic. Its conclusion was that in the possibility that the accused had laboured under influence of severe mental illness at the time of committing the alleged crime is high. It said that the accused will require long term treatment of her mental disorder, and the prognosis is good if compliance to treatment is maintained.
14. Having considered all the material placed before it, and upon taking into account the amended guidelines in the [Muruatetu Case](#) which include a consideration of age of the accused, her being a first offender, her plea of guilty, character and record, the court agrees with the Probation Officer that the accused may benefit from a non-custodial sentence as she is remorseful and has a supportive family to welcome her back to the society.
15. Having taken into consideration the accused person’s past history and mitigation statement alongside the Psychiatrist report and recommendations by the Probation Officer in the presentence report, this court finds a sentence that achieves deterrent and restorative results instead of retributive is more appropriate in the case of the Accused person herein.
16. This court then proceeds to sentence the Accused person to three (3) years’ probation on condition that:-
 - a. The accused person must obey the Supervisory Probation Officer and comply with any condition set by the Probation Department.
 - b. She must remain of good conduct.
 - c. She must not commit any offence during the probation period.
 - d. The Accused must attend guidance and counselling sessions to be organised by the Probation Department.
 - e. Failure to comply with any of the above conditions, the accused will be arrested and brought back to this court for a custodial sentence to be passed against her.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 24TH DAY OF MAY, 2024.

D.O CHEPKWONY

JUDGE

In the presence of:

M/S Wambui holding brief for Gachie for accused person



Mr. Gacharia for the State
Court Assistant - Martin

