



**Republic v Ihumba (Criminal Case E005 of 2022)  
[2024] KEHC 8240 (KLR) (20 June 2024) (Sentence)**

Neutral citation: [2024] KEHC 8240 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CRIMINAL CASE E005 OF 2022  
DKN MAGARE, J  
JUNE 20, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**PETER NJUGUNA IHUMBA ..... ACCUSED**

**SENTENCE**

1. The accused entered into a plea agreement which was filed on 23/11/2023. The parties agreed to reduce the charge to manslaughter. Victim Impact Statement and Probation Report was to be filed.
2. The deceased had 3 stab wounds inflicted, were severe. The same were not as accidental as the accused wished the court to believe. The heinousness of the crime calls for stiffer penalties.
3. On the other hand the accused pleaded guilty of the offence through the plea bargain. The accused is a first offender. The victims are not for the plea bargain and do not support a lenient sentence.
4. The Appellant is aged 33 years. Given the circumstances of the happening of the case, the court is guided by [Sentencing Guidelines 2023](#) which provides as follows:-

“5.2.6 Where an unlawful killing is done without an intention to kill (or cause grievous bodily harm?), the offence of manslaughter may be made out. In sentencing such cases, as with murder, the focus must lie primarily upon culpability. With manslaughter cases, the degree of culpability may vary widely, from the ‘one punch’ manslaughter to the case involving a prolonged campaign of domestic violence which ultimately results in the victim’s death. The focus must be on the offender’s actions and intentions at the time of the crime in assessing the degree of culpability. Sometimes a nuanced approach is called for.



5.2.7 In addition to the generic features contained in the GATS, some features that are relevant to assessing culpability in manslaughter cases include, but are not limited to the following: -

- i. Where death was caused in the course of an unlawful act which involved an intention by the offender to cause harm falling short of grievous bodily harm e.g., one punch that caused the victim to fall and suffer a catastrophic and fatal brain injury.
- ii. Where death was caused in the course of an unlawful act that carried a high risk of death or grievous bodily harm which was or ought to have been obvious to the offender e.g., driving a motor vehicle dangerously through a crowded street.
- iii. Where death was caused in the course of committing or escaping from a serious offence.
- iv. Where the offender tried to conceal the offence by concealing, dismembering, or destroying the body.
- v. Where death was caused in the course of self-defence or defence of another (though not amounting to a defence).
- vi. Where there was no intention by the offender to cause any harm and no obvious risk of anything more than minor harm e.g., the offender pushed the victim out of the way and the victim fell and suffered a fatal injury.
- vii. Where the offender's responsibility was substantially reduced by mental disorder, learning disability or lack of maturity. Examples might include the woman who suffers severe post-natal depression, or the war veteran who suffers post traumatic stress disorder to the extent that he behaves in a way that is erratic and violent in the face of ordinary day-to-day stressors.
- viii. Where there has been a history of violence towards the victim by the offender, this might be relevant to sentencing. ix. Significant mental or physical suffering caused to the deceased.
- x. Where the offence involved use of a weapon. xi. Offence committed in the presence of children (particularly relevant to domestic violence deaths)."

5. In the case of *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (14 December 2017) (Judgment), the supreme court gave the following as the objectives of the [2016 Judiciary of Kenya Sentencing Policy Guidelines](#) lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

“Sentences are imposed to meet the following objectives:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.



2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
5. Community protection: To protect the community by incapacitating the offender.
6. Denunciation: To communicate the community's condemnation of the criminal conduct."

The [sentencing policy](#) states at paragraph 4.2 that when carrying out sentencing all these objectives are geared to in totality, though in some instances some of the sentences may be in conflict.

6. The objectives are similar in the 2023 guidelines. They provide as follows: -

- “ 1.3.1 Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other – insofar as possible, sentences imposed should be geared towards meeting the objectives in totality.
- i. Retribution: To punish the offender for their criminal conduct in a just manner.
  - ii. Deterrence: To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.
  - iii. Rehabilitation: To enable the offender to reform from his/her criminal disposition and become a law-abiding person.
  - iv. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs. Community
  - v. Protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.
  - vi. Denunciation: To clearly communicate the community's condemnation of the criminal conduct.
  - vii. Reconciliation: To mend the relationship between the offender, the victim and the community.



viii. Reintegration: To facilitate the re-entry of the offender into the society”

7. I have to give a sentence that take care of the victims’ views and the nature of the offence. This was also a Gender Based Violence case, where the guidelines provide as hereunder: -
8. It does not mean that the guidelines are binding and take away discretion. In the circumstances a sentence of 20 years will suffice.

**Order**

- a. The Accused is hereby sentenced to 20 years imprisonment effective 2/2/2022 the date of arrest.

**SENTENCE READ AT NYERI ON THIS 20<sup>TH</sup> DAY OF JUNE, 2024, THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

**In the presence of:-**

Accused – present

Ms. Wambui Mwai for the Accused

Ms Kaniu for the state

Court Assistant - Jedidah

