



**Republic v Kagwiria (Criminal Case 55 of 2017)
[2024] KEHC 9546 (KLR) (25 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 9546 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 55 OF 2017
EM MURIITHI, J
JULY 25, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

CATHERIN KAGWIRIA ACCUSED

SENTENCE

1. The accused who was initially charged with murder contrary to section 203 as read with 204 of the [Penal Code](#) was on 4/3/2024 convicted for the offence of manslaughter c/s 202 as read with 205 of eh [Penal Code](#) following a Plea Bargain Agreement dated 3/2/2022.
2. The facts of the case as set out in the Plea Bargain Agreement (paras. 9-14) and admitted by the Accused were as follows:

“9. On the 25th day of July 2017, at around 7.00pm the deceased person David Kinyua Gitobu was at the home of the accused person who was his sister-in-law. The deceased then started a quarrel with he accused whereby he started hitting a dog which was behind the main house using a cane. The accused person was in the kitchen and she asked he deceased person eh reasons as to why he had hit he dog. The deceased in return then started insulting the accused by stating that he would beat the accused and further that she would taste his wrath on that night.

10. The accused person then came out of her kitchen and stood outside the house with two of her sons. The deceased who was behind the house went to the front of the house and went straight into the kitchen whereby he took two knives and hoisted them on his trouser. The deceased then entered the main house



and increased volume of the radio saying that he did not want the neighbours to hear what was going on.

11. The deceased then came out of the house, removed his shirt and threw it aside. The deceased then kicked the accused person on her back and she fell down together with the deceased. The accused person then hurriedly rose up and took a panga which was nearby and started to cut the deceased person on the back of his neck. Dennis Murega who witnessed the fight together with Isiah began screaming. Veronica Nkirote responded to the screams and went to the scene screaming and found the accused person with the murder weapon in her hand.
12. Veronica Nkirote then asked the accused person why she had cut the deceased person and she answered that she thought the deceased would have killed her. The accused person then wiped the panga which had the deceased blood using barks of a banana tree and took it into the house. The accused person then left her two children and went to inform her husband one Meshack Mwenda about the incident.
13. Grace Kinya Kinja accompanied by Joseph Mutua also went to the scene and found the accused persons children outside the house next to the body of the deceased.

When the accused persons two children saw Grace Kinya Kinja and Joseph Mutua they ran away and they also discovered the accused person was not in the house. Grace Kinya Kinja and Joseph Mutua saw that the deceased had deep multiple cuts at the back of his neck. Grace Kinya Kinja then called the area chief. The chief arrived after two hours accompanied by police officers from Gaitu Police station who carried the body to Meru Levels Hospital Mortuary.

14. Post Mortem was conducted on the 31st day of July 2017 whereby the cause of death was as a result of head and spinal injuries due to multiple cuts by a sharp object.”
3. The cause of death as recorded in the Post mortem Death Certificate No. 0774864 is “severe hemorrhage, head injury and spinal injuries as a result of assault, cut severely by a sharp object.” It is evidence of serious assault.
 4. The Probation Officer’s Report dated 29/2/2024 recommends as follows:

“Findings

The offender is 38 years old. She attended formal education and completed only primary level of education. She earns a living in Gakoromone market where she sells arrows after buying them from the gardens. She is married and a mother of 3 children who are dependants to her. Two of her children are in secondary school and the last born is in lower primary school.

The father and the mother of the primary victim (deceased) who also are father-in-law and mother-in-law to the offender informed that the victim had separated with his wife and was troubling his sister-in-law before the committing of this offence. They informed that



currently they are living with one child of the deceased person and the offender has been instrumental in providing for them and the child of the victim.

They further informed that the victim also troubled them and the offender. At point before this offence, they had a family meeting to warn the deceased to stop troubling the offender but he did not stop. They state they forgave her and they have reconciled with her since when he committed the offence.

The neighbours and area administration informed that the offender has been a person of good antecedent and this offence shocked them. They said they could not believe the offender could have committed an offence. They are optimistic that the offender has learnt a lesson from this an isolated offence she committed.

The offender is remorseful and appears to have learnt a lesson. She pleads for the court leniency and states that she regrets the circumstance leading her committing this offence.

Recommendation

In the upshot, the home environment is conducive and the secondary victims have reconciled with the offender. Your honour, the offender may be placed on probation.

Mwenda Kiriinya

Probation Officer

Githongo Station

29/0212024”

5. Similarly, in the Victim Impact Statement dated 23/5/2024, the Probation Officer writes:

“Conclusion

The secondary victims have since reconciled with the offender. They have been relating well with her and coexisting peacefully with the offender.

Recommendation

The secondary victims have continued with an affable relation with the offender. The home environment is conducive and the secondary victims state that they need the offender at home since they are now senior citizens in need of her care.”

6. At the Mitigation and Sentencing Proceedings, Counsel for the Accused and for the Prosecution submitted as follows:

“Mr. Igweta for Accused

In mitigation, Accused is remorseful. She is a mother of 3 two who are minors aged 8 and 9. We urge Court to consider the circumstances of the offence that it is the deceased who attacked the accused at her home. Accused has reached out to victim’s family. By agreeing to plea bargain she has saved judicial time.

The Victim Impact Statement and Pre-sentence Report are positive for non-custodial sentence.

Mr. Masila for DPP

The Pre-sentence Report and Victim Impact Statement Report recommend Probation. Indeed, it was a case of provocation and not self defence. The Court needs to consider



whether the accused is remorseful because she was caught in the act or she is genuinely remorseful.

From the Victim Impact Statement, it is true the accused is taking care of the deceased's children. The Statement is signed by the parents of the deceased. They have reconciled. The accused and the deceased's family. The Court should promote family relations. The accused is a sister in law to the deceased. She is married to the brother of the deceased. The father-in-law is before the Court.

The Court needs to promote harmony in the family set up and bring continuity despite the offence. I pray that the court considers a non-custodial sentence and the accused be placed on Probation.”

7. The Court has considered that the accused and the deceased were sister and brother-in-law; that the deceased was the aggressor who precipitated the attack on the accused and that the deceased's family were reconciled with the accused who remains married to the deceased's brother as exemplified by the deceased's father who attended court on the sentencing proceedings. In these circumstances, the Court agrees with the Prosecution's submission that it has a role and duty to promote and uphold reconciliation and peaceable and harmonious living among the family members.
8. However, for the offence of manslaughter resulting from her retaliation following the provocative attack by her brother-in-law, and the court noted the grievous cuts and wounding to the deceased's back of his head, neck and shoulder region with a sharp object as shown in the Postmortem dated 31/7/2017, instead running away to avoid the confrontation, the accused is liable to deterrent and rehabilitative treatment. The Accused inflicted multiple strikes on the deceased as shown by the 7 cuts on the back of the head and neck area. It appears clearly as excessive force when compared to the evidence of the deceased's aggression set out in the Plea Bargain Agreement. The accused must be told by appropriate action that her reaction to the deceased's attack was an unproportionate overkill which calls for deterrent penalty.
9. In the circumstances of this case, I should consider that an imprisonment term for two (2) years should meet the justice of the case. However, on account of the demonstrated reconciliation and plea for court to promote harmonious living among the close relatives, the Court shall pursuant to section 15 of the Criminal Procedure Code suspend the sentence to take effect only if the accused commits another offence in the operative period which the court considers to be a three-year period.
10. Section 15 of the [Criminal Procedure Code](#) provides as follows:

“ 15. Suspended Sentences

1. Any court which passes a sentence of imprisonment for a term of not more than two years for any offence may order that the sentence shall not take effect unless during the period specified by the court (hereinafter called the "operational period") the offender commits another offence, whether that offence is punishable by imprisonment, corporal punishment or by a fine.
2. Where the offender is convicted of an offence during the operational period the sentence for the first offence in respect of which the offender was convicted under subsection (1) shall thereupon take effect.



3. Where under subsection (2) the sentence passed for the first offence under subsection (1) takes effect the sentence passed for the subsequent offence shall run consecutively to the sentence passed for the first offence.

[Act No. 7 of 1990, s. 4.]”

Duty to flee

11. The Court must enforce a duty on a victim of an attack to run away and avoid the attack rather than standing ground to fight and retaliate in the event that may result in grievous or fatal assault. For those who do not step back from an attack and violently respond in an attempt to stall the attack, they become liable and responsible for any damage, injury or loss occasioned by their acts, and penal treatment by way of deterrence and rehabilitation is warranted.

Orders

12. Accordingly, for the reasons set out above, having convicted the accused for manslaughter contrary to section 202 as read with 205 of the [Penal Code](#), the Court sentences accused person to serve imprisonment for a term of two (2) years having regard to the accused’s circumstances.
13. In accordance with section 15 of the [Criminal Procedure Code](#) the said sentence of imprisonment for two (2) years shall be suspended for an operative period of three (3) years within which he accused must not commit any other offence.
14. In terms of section 15 (2) of the [Criminal Procedure Code](#) if the accused commits an offence and is convicted of an offence during the operational period of three (3) years, the sentence of imprisonment for two (2) years herein imposed shall thereupon take effect and, in accordance with section 15 (3) of the [CPC](#), run consecutively with the sentence in that other offence.

Order accordingly.

DATED AND DELIVERED ON THIS 25TH DAY OF JULY 2024.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Masila with Mr. Chelule, Prosecution Counsel for the DPP.

Mr. Igweta, Advocate for Accused.

