



**Republic v Kimani (Criminal Case E034 of 2021)  
[2024] KEHC 10033 (KLR) (Crim) (8 August 2024) (Sentence)**

Neutral citation: [2024] KEHC 10033 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
CRIMINAL  
CRIMINAL CASE E034 OF 2021  
LN MUTENDE, J  
AUGUST 8, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**DAVID KIMANI ..... ACCUSED**

**SENTENCE**

1. David Kimani, the accused, at the outset was charged with two (2) counts of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He denied the information presented, but, prior to pre-trial directions being taken he opted to enter into a plea-bargain arrangement with the State that was reduced into writing and signed on 2<sup>nd</sup> February, 2024.
2. The plea agreement was adopted by court pursuant to Section 137 H of the Criminal Procedure Code. In the result, the accused was convicted of a lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.
3. Facts of the case were that the accused, aged 24 years old, the first born son of Peninah Njoki Kimani (deceased) was born in May 1999 to the mother who was then a student at Maseno University, therefore, he was raised by his maternal grandparents.
4. The accused graduated from Kabete Polytechnic with a Diploma and joined Nickdee Entertainment College in 2020 to pursue a diploma in Djeeing: At the time of the incident he worked at Summer Sauce Company.
5. Prior to his mother meeting Carlos Kaburu, she lived with the accused in different estates in Nairobi County. His mother wedded Carlos in church and the union was blessed with Ian Kaburu (deceased) who was seven (7) years old at the time of his demise.



6. The accused suffered from anxiety and depression from 2016-2019 and was treated at Kenyatta National Hospital and Mama Lucy Hospital for stress. On 28<sup>th</sup> April, 2022 the accused was referred to Mathare Hospital for further treatment. At the time the family had established their matrimonial home at Kamulu.
7. On the fateful date Peninah was not well hence stayed home. Also present were the accused, his sibling and their house-help Georgina. The accused had not eaten the previous night. He paced up and down and when persuaded by his mother to eat he promised to eat later. A while later Georgina who was outside on phone heard Ian crying. She went to the house to find the accused at a corner and on seeing the house help, he called her saying she was the one remaining.
8. Georgina ran out screaming, a neighbor, Mama Maina went to her aid only to encounter the accused holding a stone. Other neighbours went to the house to find Mama Maina injured. She had fallen down and was bleeding. By then the accused had locked himself inside the house. After a long struggle he opened the door. Neighbours entered the house to find the bodies of the deceased with injuries that had been inflicted. Murder weapons, a kitchen knife and stones were found scattered all over. The police were notified. They visited the scene and later moved the bodies to the mortuary.
9. A post mortem conducted on the body of Peninah Njoki Kimani indicated the cause of death as craniocerebral injuries due to blunt force trauma consistent with an assault.
10. With regard to Ian Maina the cause of death was severe craniocerebral injuries consistent with assault.
11. To reach an informed decision, the court sought a pre-sentence report. The accused family represented by his uncle, a sibling to Peninah is receptive to the accused release. They promise to support his reintegration and settlement. The family has forgiven the accused after acknowledging his deed and expressed remorse.
12. A secondary victim the 1<sup>st</sup> deceased husband and biological father to the 2<sup>nd</sup> deceased however opposes his release. It is argued that if released the accused will wipe out his entire family. His current wife supports the allegation.
13. The community represented by neighbours who related well with the accused and his family argue that the accused condition was not well managed as he was not in control of his action at the time. The accused suffered from depression over a period of time.
14. In mitigation the accused expresses remorse and seeks forgiveness. That he has reformed socially and psychologically. He acquired skills in the course of his stay in prison; was baptized and now is involved in guidance and counselling.
15. Section 205 of the Penal Code provides that:

Any person who commits the felony of manslaughter is liable to imprisonment for life.
16. It is a fundamental principle of justice that a sentence meted out should be commensurate with the offence committed. In the case of *Omuse Vs. R* (2009) KLR 214 it was noted that the sentence meted out should take into consideration the accused moral blameworthiness. The Judiciary Sentencing Guidelines at paragraph 3.1 requires the court to also consider circumstances in which the offence was committed. The sentence must be properly related to the degree of the offence committed. It provides thus:

“Proportionality: 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.”

17. The peculiarity of this matter is the history of depression the accused suffered from. Upon arraignment the accused /offender continued to exhibit mental impairment. Mental illness or impaired functioning of the mind is a mitigating factor. The mental infirmity that was evident at the point of appearance in court supporting facts presented is mitigation evidence.
18. Pursuant to the order of this court, the accused was examined recently. A report dated 15<sup>th</sup> July,2024, indicate that he is mentally stable. However, taking into consideration the continued mental impairment that the accused exhibited at the outset, this court hesitates to release him directly to probation supervision.
19. In the circumstances, I sentence the accused to six (6) years on each count. Three (3) years shall be served in prison where he will be monitored closely on his progress, as he commences the rehabilitation process; while three (3) years shall be served under probation supervision; a sentence that will run concurrently from the date of arraignment, the 6<sup>th</sup> June, 2022.
20. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 8<sup>TH</sup> DAY OF AUGUST, 2024.**

**L. N. MUTENDE**

