



**Republic v Mwenda (Criminal Case E019 of 2023)
[2024] KEHC 10052 (KLR) (8 August 2024) (Sentence)**

Neutral citation: [2024] KEHC 10052 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E019 OF 2023
RN NYAKUNDI, J
AUGUST 8, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

SILAS KINYUA MWENDA ACCUSED

SENTENCE

1. Silas Kinyua Mwenda faced a charge of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 1st day of March, 2023 at 0900hrs in Kipkaren Estate, in Kapseret Sub-County within Uasin Gishu County, in the Republic of Kenya murdered one John Anampiu Marete. The charge was however reduced to manslaughter as per the plea agreement dated 15th May, 2024. The court entered a plea of guilty on the charge of manslaughter after certifying that the Plea Bargain Agreement conformed with the provisions of Section 137A-O of the Criminal Procedure Code. Similarly, this court was content with the factual matrix of the case and the accused’s competence to enter into the Plea bargain agreement.
2. The accused person was under the leadership of learned counsel Ms. Moronge Damaris whereas the prosecution was led by Mr. Mark Mugun.
3. Learned Counsel Ms. Moronge filed submissions in mitigating for the accused person. She submitted that the accused person is a first time offender and is extremely remorseful about the incident. That the accused person never intended to kill the deceased, and in the heat of the moment, he acted in self-defence after altercations ensued between himself, and the deceased.
4. It was counsel’s submission that the accused person herein suffers from recurrent mental illness from time to time. That at the time he committed the offence, he was not in his proper state of mind. She further submitted that relying on the Pre-sentence report, discussions held by relatives from both sides of the family indicate that, they have since forgiven the accused person for what he did. In counsel’s



view and in the spirit of Section 333(2) of the CPC, a credit period of One year and four months should be incorporated in the final sentence.

5. For the above given reasons, counsel pleaded on behalf of the accused for leniency and administer a custodial sentence and a non-custodial sentence.
6. Similarly, I have noted the pre-sentence report on record, in which the accused person is remorseful. He attributed his action to mental illness and the fact that he acted out of self-defence after his father allegedly attacked him. His family at large equally acknowledged the magnitude of the offence but they have already forgiven him. The report recommended that the accused is not fit for a non-custodial sentence.
7. The lesser charge in question is punishable by a maximum sentence of life imprisonment under section 205 of the penal code. The sentence is however reserved for serious cases. In the Plea bargain agreement, the prosecution proposed a sentence of between seven-ten years whereas the accused person through counsel suggested a term of seven years followed by a non-custodial sentence of 1 year.
8. The sentencing objectives in Kenya have been captured in the Sentencing guidelines 2023 to be the following: -
 - a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - e. Community protection: to protect the community by incapacitating the offender.
 - f. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - h. Reintegration: To facilitate the re-entry of the offender into the society.
9. Additionally, in the "[*Muruatetu Case*](#)", the Supreme Court outlined the following guidelines as being applicable when the Court was giving consideration to sentencing;
 - “(a) age of the offender;
 - (b) being a first offender;
 - (c) whether the offender pleaded guilty;
 - (d) character and record of the offender;
 - (e) commission of the offence in response to gender-based violence;
 - (f) remorsefulness of the offender;
 - (g) the possibility of reform and social re-adaption of the offender;



(h) any other factor that the Court considers relevant.”

10. The circumstances resulting to the unfortunate circumstances are that on the 1st day of March, 2023 at around 0900Hrs, the accused’s mother went to knock on the door of his house to inquire why he had taken her mincing machine without consent. While she was still making those inquiries, the deceased overheard the conversation and chipped in by stating that he will be sure to inform the police for necessary action to be taken. He also called the accused, “Matako wewe!” while demanding for the machine. He then hit the accused on the shoulder and the head using his fists. The accused got infuriated by that remark, took a wooden bar and hit his father two times on the head, thus causing him to sustain deep cut wounds. He fell down unconscious and continued to bleed from the head. The deceased’s other sons, and the accused’s brothers rushed the old man to MTRH. The deceased was taken immediately to the ICU wing. He later succumbed to those injuries. The autopsy report indicated that the cause of death was Septicaemia due to pneumonia due to head injuries.
11. In *Wero vs R.* (1983) KLR 349, the Court of Appeal (Madan, Kneller JJA. & Chesoni, Ag. JA.), the accused had been charged with murder but was convicted for manslaughter and sentenced to eight year’s imprisonment, after he plead guilty to the reduced charge. The court held that –

“The sentence of eight year’s imprisonment where the case was on the borderline between murder and manslaughter was legal, appropriate and not manifestly excessive.”
12. In *Andrew vs R* (1980) KLR 153, another case of plea of guilty to a reduced charge of manslaughter, the Court of Appeal (Madan & Potter JJA. & Simpson, Ag. JA.) considered the period of almost one year that the appellant had been in custody and reduced a sentence of imprisonment for eleven years to five years.
13. The general thread running across cases of such homicides is that the court will look at the circumstances of the case and the aggravating factors such as the weapon used. The case presents facts of a son and a father who had an altercation which resulted into the son hacking his own father to death. It is trite that the sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that the proper exercise of discretion in sentencing requires the Court to consider that fact and circumstances of the case in their entirety before settling for any given sentence.
14. I have considered the sentencing objectives in totality. The accused person is relatively a young person and it was established from the pre-sentence report that a non-custodial sentence is not fit for him. In that regard, I have come to the logical conclusion that 10 years’ imprisonment would be an appropriate sentence. For purposes of Section 333(2) of the CPC, the credit period of One Year and Four Months is allowed.
15. Orders accordingly.

DATED AND SIGNED AT ELDORET THIS 8TH DAY OF AUGUST, 2024

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HON. R. NYAKUNDI
JUDGE

