



**Republic v Njeru (Criminal Case 6 of 2015)
[2024] KEHC 10817 (KLR) (17 September 2024) (Sentence)**

Neutral citation: [2024] KEHC 10817 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 6 OF 2015
RM MWONGO, J
SEPTEMBER 17, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

DICKSON GITHINJI NJERU ACCUSED

SENTENCE

1. The accused was charged with Murder on 20th March, 2015, and pleaded not guilty to the offence on 7th May, 2015. On 24th July, 2023 the defence proposed a plea bargain agreement. The matter was given a date for Plea Bargain Agreement settlement on 29th January, 2024, to give the parties time to consider the proposal.
2. The parties availed a signed Plea Bargain Agreement (PBA) pursuant to Section 137A (i) and 137B of the Criminal Procedure Code On 6th March, 2024.
3. The court, being satisfied that the accused had understood the contents of the PBA, and that he had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion, adopted the PBA, pursuant to Section 137G of the Criminal Procedure Code.
4. The brief facts of the case are that on 20th March, 2015 at about 10.00 pm at Mburi Shopping Centre, the deceased was with a boda boda rider, Maxwell Njuki Munene, when he dropped the accused. The accused refused to pay for the service, then snatched the ignition key and threw it. He proceeded to slap the Boda rider.
5. The deceased tried to intervene and a confrontation ensued between them. Maxwell managed to pick up the ignition keys and left the two quarreling. The accused rushed to the house and came back armed with a knife. He stabbed the deceased on the chest and threatened those around that he was going to get a panga. He did not return. The victim was rushed to Kianyaga Sub-County Hospital where he died on arrival.



6. The post-mortem report dated 24th March, 2015, indicates that he died due to cardiorespiratory failure due to hemopneumothorax after a stab wound on the right chest.
7. Upon the facts presented and on the strength of the PBA, the court thereby convicted the accused for manslaughter on 6th March, 2024. The Pre-Sentence Probation Report had been filed hence the matter proceeded for mitigation.
8. In mitigation, the defence counsel submitted that the accused was a 1st offender and remorseful. The accused and the victim's family have reconciled. His family has paid restitution to the victim's family of Kshs 100,000/-.
9. He further stated that the accused has a two-year-old child and is the sole breadwinner. He works as a welder, and has been in custody for 6 years until he was released on bond on 28th September, 2020. He seeks a lenient sentence. Further, the probation report is favourable, and the defence prays for a non-custodial sentence.
10. The victim's father admitted that the accused family had paid restitution of Kshs.100,000/=. There remained a balance of Kshs. 100,000/=.
11. The prosecution submitted that the accused has no skills or child. Further he should be incarcerated and rehabilitated. He should be sentenced to an additional 6 years imprisonment.

Issue for determination

12. The only issue for determination, is whether the sentence proposed in the Plea Bargain Agreement should be adopted.

Analysis and Determination

13. This court, when meting sentence is required to take into consideration the following: the mitigation of the accused, the probation report, including victim impact statement, the aggravating and mitigating circumstances, and the policy of the judiciary on sentencing.
14. The Probation Report indicates that the accused is 32 years old. His father, Simon Njeru, is a mason and his mother, Alice Micere, is a farmer on their 1 acre of land at Mhuri. He is the last-born child and has three siblings. The family is of average economic means and well-regarded in the community. The accused dropped out of school in Form 2 due to lack of interest. He has no formal training and has been engaged in farming and casual jobs. He married Winfred Wakuthii and they have one child aged 2 years. They live on their father's land.
15. The accused said that he was under the influence of alcohol when he killed the victim who was his friend for many years. He regrets the incident and is open to rehabilitation.
16. The accused is not viewed as a threat to the community and is not likely to be harmed by members of the public should he be released. His victim was about 33 years old, he did not have a family by the time of his demise. The victim's family have reconciled with the accused family. They did not object to him serving a non-custodial sentence.
17. The Probation Report recommended the accused for a non-custodial sentence and recommends Community Service Order work at Njukiini South chief's camp.



18. The applicable law on sentence for the offence of manslaughter is contained in Section 205 of the [Penal Code](#) which provides as follows;

“ Any person who commits the felony of manslaughter is liable to imprisonment for life”

19. The section provides for the maximum sentence which is life imprisonment. This court has taken into consideration the aggravating circumstances in that the convict murdered the victim by stabbing him with a knife on the right side of the chest.

20. Paragraph 4 of the Judiciary Sentencing Policy provides the objectives of sentencing as follows:

“ 4.1 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.”

21. The Supreme Court decision in [Francis Karioko Muruatetu & Another v Republic](#) [2017] eKLR gives guidance regarding application of mitigating circumstances before sentencing, in the following terms:

“In sentencing the court will consider mitigating factors such as the following;

- 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. The manner in which the offence was committed on the victim;
- g. The physical and psychological effect of the offence on the victim’s family;
- h. Remorsefulness of the offender;



- i. The possibility of reform and social re-adaptation of the offender;
 - j. Any other factor that the Court considers relevant.”
22. I have taken into consideration the above sentencing guidelines; and the Probation Report which recommends a non-custodial sentence. I have also considered the circumstances of the offence, and the Judiciary sentencing Policy.

Disposition

23. In my view the accused satisfies the criteria for a reduced sentence from the maximum life imprisonment. The court notes that the accused spent 5 years and 5 months in remand custody, and has been in prison custody after conviction since 6th March 2024.
24. Taking all the above information into account, I therefore sentence the accused to ten (10) years imprisonment to include the whole period he has spent in remand custody or prison; and upon the further conditions that:
 - a. He shall have the benefit of being credited with 1/3rd remission of the sentence under Section 46(2) of the *Prisons Act*, unless the same was lost.
 - b. The balance of his sentence term, if any, shall be a non-custodial sentence to be served in community service at Njukini South Chief's Camp under supervision of the Probation Officer.
25. Orders accordingly.

DATED AT KERUGOYA THIS 17TH DAY OF SEPTEMBER, 2024

R. MWONGO

JUDGE

Delivered in the presence of:-

1. Mamba for the State
2. Mwangi K. for Accused
3. Accused Present in person
4. Court Assistant, Murage

