



**Republic v Mwangi (Criminal Case 42 of 2018)
[2023] KEHC 577 (KLR) (9 February 2023) (Sentence)**

Neutral citation: [2023] KEHC 577 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 42 OF 2018
MM KASANGO, J
FEBRUARY 9, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

HESBON KIIRU MWANGI ACCUSED

SENTENCE

1. Hesbon Kiiru Mwangi, was convicted on July 7, 2022 of the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#).

Facts

2. Hesbon on June 31, 2018 was seen by the deceased and one other person arriving home while bitterly quarrelling with his wife. The wife ran and locked herself in their house which was one of the many houses in one plot. The deceased was their neighbour. On the deceased hearing Hesbon knocking the door of his house, he told Hesbon the following: -

“Tell your wife to open door (*sic*) instead of knocking incessantly.”

3. That statement incensed Hesbon very much. This court by its judgment of July 7, 2022 noted the following as the actions of Hesbon which led to the death of the deceased:-

“Prosecution’s witness Felista Mukui saw the accused grab deceased from behind, following that comment by deceased. Felista saw the accused throw deceased down as deceased was at the door of his room. Accused according to Felista began to rain blows and kicks on deceased. Felista also saw accused step on the deceased with his boots while deceased was on the ground. Felista screamed and neighbours gathered. Felista noted deceased was bleeding through his nose and ears and other parts. The neighbours intervened and demanded



accused does take deceased to hospital. By then, according to deceased's friend, Samuel Mutua Moganda, (Samuel) the deceased was unable to support himself up.”

4. The post-mortem report indicates the deceased died due to a head injury due to blunt force trauma to the head.
5. Hesbon swore an affidavit in support of his mitigation. He stated that he is remorseful of the offence. He pleads the court does give him non-custodial sentence because he is a family man with two children who depend on him. He stated that, during his period in remand while awaiting the conclusion of his case, he was rehabilitated through various prison programs.
6. In as much as Hesbon is repentant of the offence, in his submission, he stated that both he and deceased were drunk and they therefore engaged in a fight leading to deceased's death. That however is contrary to this court's finding in convicting Hesbon of the offence of murder. This court found that Hesbon without any provocation viciously attacked the deceased causing him to suffer very serious injuries which led to deceased being admitted in the ICU ward of Gatundu hospital for two months after which period he succumbed to his injuries.
7. The failure of Hesbon to accept the finding of this court brings to doubt his genuine remorsefulness of the offence.
8. Hesbon is also not truthful in his submission for he stated he was remanded in custody from June 1, 2018 to date yet the record shows he was granted bond and was ordered and was indeed released from custody on February 25, 2019.
9. I have considered the probation report filed in court on October 17, 2018. This shows that Hesbon's mother, a single mother passed away when he was young. He was brought up by his grandparents. He is married with two children who are now 12 years and 17 years old. His wife engages in casual employment. Hesbon is 37 years old.
10. I have considered the sentencing guidelines of Supreme Court in the case of *Francis Karioko Muruatetu & another v Republic* Petition No 15 of 2015 as follows:-

“... the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

 - (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-adaptation of the offender;
 - (h) any other factor that the court considers relevant.”
11. Hesbon as stated before is now 37 years old. He is a first offender with no previous conviction. I am concerned that his attack of the deceased sprang from a bitter disagreement with his wife. All the prosecution's witnesses who were present at scene of attack of the deceased described Hesbon as being very annoyed. It is obvious Hesbon was unable to control his temper so much that he attacked the



deceased. It was unprovoked attack. Sentence should be proportionate and should take into account mitigation.

12. In my view, considering the above, the appropriate sentence is a custodial sentence. Hesbon is sentenced to serve 15 years imprisonment.

Conclusion

13. Hesbon Kiiru Mwangi is hereby sentenced to serve 15 years imprisonment for the offence of murder of Kimuyu Muia (deceased). Hesbon Mwangi shall be given credit of 6 months that he was remanded in custody.

RULING DATED AND DELIVERED AT KIAMBU THIS 9TH DAY OF FEBRUARY, 2023.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Mourice/Julia

Accused: Hesbon Kiiru Mwangi:- Present

Instructed by Munene Warutere & Co. Advocates for accused:- Mr. Munene

Instructed by DPP:- Mr. Gacharia

RULING delivered virtually.

MARY KASANGO

JUDGE

