



**Republic v Girigacha (Criminal Case 4 of 2018)
[2023] KEHC 759 (KLR) (8 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 759 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 4 OF 2018
RM MWONGO, J
FEBRUARY 8, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

EDITH MUTHONI GIRIGACHA ACCUSED

JUDGMENT

1. The Accused, Edith Muthoni, was charged with Murder on 25th February, 2018. On 20th March, 2018 she pleaded not guilty to the offence. The matter proceeded to hearing and three (3) witnesses testified for the prosecution on 27th November, 2019.
2. On 19th October, 2021, the defence proposed a plea bargain agreement, and indicted that they had already written formally to the DPP. The prosecution sought 21 days to respond to the same, and the court gave the parties time to consider the proposal. Several mention hearings lapsed as the parties were negotiating the PBA
3. On 22nd November, 2022, the parties reported to the court that an agreement had been reached and reduced into a Plea Bargain Agreement (PBA) which had been signed pursuant to Sections 137A (i) and 137B of the *Criminal Procedure Code*, and they availed a copy to the court.
4. After completing the procedures under Section 137F of the CPC, the Plea Bargain Agreement dated 27th September, 2022 was adopted by the court pursuant to Section 137G of the Criminal Procedure Code. Further, the court being satisfied that the accused had understood the contents and that she had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion.



5. The brief facts of the case as agreed in the PBA are that had the case gone to trial the prosecution would have demonstrated that:

- “ 1) The deceased Francis Ngirigacha Muriithi and the accused Edith Muthoni Ngirigacha had been staying together as husband and wife for a period of 4 years.
- 2) On 25th February 2018, the deceased visited the accused at Gacharu market where she was frying chips and demanded to be given Ksh.500/= but the accused declined.
- 3) It is the testimony of PW4, John Muriuki Keen that on 25th February 2018 at about 8pm he was his way home when he met both the accused and the deceased at Gacharu area where the accused usually sale her chips.
- 4) That he greeted them but the deceased was repulsive stating that what he was discussing with his wife was more important than his greetings. That he noticed the deceased was in a drunken stepper and was engaged in a heated exchange with the wife.
- 5) That the deceased slapped him on his right cheek until he staggered and upon inquiring why he had slapped him and yet he just greeted him, he retorted that what he was talking to the wife was more important than his presence. He stated that at this point he opted to proceed home but before long heard a scream of a woman shouting for help but he did not turn back.
- 6) PW3 Stanely Gakono, the brother to the deceased arrived at the scene after receiving information that the brother had been stabbed and found the accused standing while covering herself with a lesa with blood flowing from her back while crying.
- 7) That the accused pleaded to be taken to hospital and he took her using his motorbike first to the Sagana Police Station where she was issued with a P3 form and later to Sagana District Hospital.
- 8) PW5 Naphtali Wamugunda Mutugi on 25th February 2018 at about 7pm heard a woman shouting and indeed when he made effort to see who it was, he met up with the deceased and the accused exchanging bitter words at each other. He states that he cautioned them not to enter his farm while fighting as he knew the deceased was rowdy whenever he was drunk.
- 9) That before he could notice what was happening, the accused turned towards his homestead in a flash and vanished and he saw the deceased going down barely five meters and fell down. That he waited for about ten minutes but he did not wake up. That he was cautious not to move close as the deceased was known to be disruptive while drunk.
- 10) PW1 Abel Mlayi Wamalwa on 25th February 2018 at about 8pm heard a female shouting and when he got curious, he moved towards the direction where the shouts were emanating and at about 30 meters, he spotted a man lying down and a closer look noticed it was the deceased (Francis Muriithi) a person he knew well. That the voice of the woman who was shouting had gone silent.



- 11) That seeing the condition that he was in was not good; he decided to call Kiraithe an AP Police from Gacharu Post. That he could hear another voice of a woman crying from an adjacent homestead and when he went there, he got the accused (Edith Muthoni) the wife to the deceased also having been stabbed.
 - 12) PW10 No.113306 PC John Okwalo was the investigating officer. He recorded statements and recovered the murder weapon (a kitchen knife) with blood stain and escorted it to the government chemist.
 - 13) That the accused reported at the Police Station while looking sick and bleeding of an assault and she was escorted to Sagana District Hospital before being taken to Kerugoya County Hospital.
 - 14) That she was discharged on 27th February 2018 and gave her side if the story. He was able to establish that the deceased had arrived at the accused place of work and picked a quarrel with her. In the process, he snatched a kitchen knife from the accused and stabbed her at the back before the accused in turn took the same knife and stabbed deceased on the side of his chest killing him instantly.
 - 15) Dr. Karomo who performed the post mortem formed the opinion the cause of death was due to cardiopulmonary arrest due to hemorrhagic caused by heavy internal hemorrhage cause by injury to the heart by a sharp object. The death certificate No 0916093 is attached.”
6. Upon adoption and recording of the PBA, the Court convicted the accused for manslaughter. Mitigation was set for 14th December, 2022, and the court ordered a Pre-Sentence Probation Report to be availed with 14 days. The same was filed on 7th December, 2022.
 7. On 14th December, 2022 the defence counsel submitted on mitigation. He stated that the accused was a 1st offender, was remorseful and prayed for leniency. She had been in custody for 4 years and 10 months. The circumstances of the event show that she was acting in self-defence. Further, the probation report is favourable. They prayed for a non-custodial sentence of 3 years.
 8. The prosecution submitted that the Court should be guided by the Probation Report especially the observations and conclusions. He adopted the proposed sentence in the Plea Bargain Agreement which was indicated as “Three (3) years non custodial sentence”.
 9. The Probation Report indicates that the offender is aged 38 years and is a fifth born among nine siblings. She married the deceased in 2014 and they farmed tobacco. The couple was involved in constant domestic fights and on and off separations. The has a very supportive family in Kiamuthambi village that is willing to assist her reintegrate to the community. The victim’s family said they had forgiven the offender and were not opposed to her release back to the community. The local administration at Kiamuthambi where she is expected to settle gave a positive report and informed that the accused and her entire family did not have anything detrimental to peaceful co-existence within the community.
 10. The Probation Report indicates further as follows:

“Those interviewed from the Community at Gacharu village talked well of the offender. She was said to be hardworking, outgoing and related very well with other members of the Community.....”



“The victim’s family on the other hand was said to be violent and uncontrollable hence Community members rarely intervened for fear of counter attack. There were unresolved issues beyond them that had been seen the death of their members some through suicide. The family was feared within the village and some feared to speak openly about them.

The local Administration Kiamuthambi village talked well of the offender and her entire family. It was to have earned a lot of respect within the Community.”

11. The victim’s family said they have forgiven the offender. They informed that they chose to forgive her as it has been a while and had lost many other family members through death. Those talked said that they have purposed to forget the past and move forward.

The two sisters to the victim who are alive out of nine (9) members said they have no grudge nor ill feelings whatsoever against the offender and were not opposed to her released back to the Community.

12. The Probation Report recommended the offender for a non-custodial sentence during which she would be accorded guidance and counselling to live uprightly again. The Probation Officer did not indicate the length of the sentence.

13. The applicable law on sentence for the offence of manslaughter is found under the provisions of Section 205 of the *Penal Code* which reads as follows;

‘Any person who commits the felony of manslaughter is liable to imprisonment for life’

14. The section provides for the maximum sentence that is life imprisonment; this court has taken into consideration the aggravating circumstances in that the convict used a deadly weapon namely a kitchen knife in committing the offence; but the facts reveal that the killing was not premeditated; the accused was acting in self-defence as she had been stabbed in the back by the deceased.

15. The supreme Court decision in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR has provided guidance on the mitigating circumstances to be considered before sentencing as follows:

“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.”

16. Taking into consideration the above sentencing guideline and the Probation Report that recommended for a non-custodial sentence, the offender satisfies the criteria for a reduced sentence from the maximum life imprisonment.



17. I have keenly noted that the offender was the wife of the deceased, that the accused acted essentially in self defence, and that self defence is a substantial defence in a criminal indictment.
18. I note that the offender has been in custody for almost five (5) years since her arrest in February 2018. In my view, that period is sufficient punishment under the circumstances of this case. I agree with the proposal of the State and the Probation Officer that the accused is suitable for a non-custodial sentence.
19. Accordingly, I hereby sentence the offender to three (3) years non-custodial sentence effective from today on the following conditions:
 - a. The offender shall attend a detailed Guidance and Counselling programme designed by the Probation Officer; and a record of the programme and attendance thereof shall be maintained by the Probation Officer.
 - b. During the three-year period of the sentence, the Probation Officer may place the offender in a community service programme in one or more locations or places
 - c. Should the offender fall afoul of the law and be convicted for any offence during the non-custodial period, the offender shall forthwith be brought before the court and the sentence may be reviewed.
20. Orders accordingly.

DATED AT KERUGOYA THIS 8TH DAY OF FEBRUARY, 2023

R. MWONGO

JUDGE

Delivered in the presence of:

1. Makazi for the Offender/Accused
2. Mamba for the State
3. Mr. Murage, Court Assistant

