



**Republic v Nyambura (Criminal Case 044 of 2021)
[2023] KEHC 3174 (KLR) (Crim) (18 April 2023) (Sentence)**

Neutral citation: [2023] KEHC 3174 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 044 OF 2021
LN MUTENDE, J
APRIL 18, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

EUNICE WANJIRU NYAMBURA ACCUSED

SENTENCE

1. Eunice Wanjiru Nyambura, the Accused, was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*, but, following an arrangement with the prosecution she agreed to plead guilty to a lesser charge of manslaughter in exchange of a lenient sentence. This was reduced into the plea-bargaining agreement that was adopted as an order of this court pursuant to Section 137 H of the *Criminal Procedure Code*. In the result, she was convicted of a lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.
2. Briefly the facts of the case are that the accused started cohabiting with the deceased in April, 2018, a relationship that blossomed into a marriage. In September, 2018, they started disagreeing, this degenerated into the deceased assaulting the accused on many occasions. Neighbours were usually disturbed as a result of the frequent fights that occurred whenever they would be drunk. In October, 2020, the deceased was infuriated with the conduct of the accused who refused to eat supper. He stabbed her near the ribs and the right thumb. She was taken to hospital, treated and discharged. On June 22, 2022 the deceased returned home at midnight but did not find the accused hence went to look for her at a bar that they used to frequent. He found her with vegetables, and having left her without money, he demanded to know where she got money from to purchase them. The accused explained that she had Ksh.50/- from her secret account that she used. However, the deceased accused her of having extra-marital affairs but they settled the issue and went home.



3. Upon reaching the house the deceased locked the door and embarked upon assaulting the accused. In the process the accused picked a kitchen knife and stabbed the deceased on the chest then hid the knife under the pallet that was used as the bed, and ran outside. She started to destroy iron sheets, an act that made annoying noise. In the result the deceased pursued her but fell down and succumbed to injuries sustained.
4. The postmortem conducted indicated that the cause of death was due to severe haemorrhage secondary to penetrating chest injury (stab wound).
5. There having been no previous records, the accused is treated as a first offender.
6. In mitigation it is submitted that the accused is remorseful and has reformed. That she is a mother of a six-year-old son who has dropped out of school and is under the care of her mother who survives through support of well-wishers. Pleading for a non-custodial sentence the accused states that she is HIV positive and has not been on medication.
7. Arguing that she had no intention of killing the deceased, reliance was placed on the case of *Republic versus Isaiah Goro Maloa* (2020) Eklr where Aburili J. held that:

“...Considering all the circumstances of this case, the mitigation and the Victim Impact Statement and the fact that the accused has saved the court’s time and resources by pleading guilty to the charge of Murder, I exercise discretion and sentence the accused person to serve three (3) years imprisonment taking into account the period already spend in prison custody.”
8. To reach an informed decision on sentencing this court ordered for a pre-sentence report. Secondary victims expressed the effect the death of the primary victim had on them. That his loss accelerated his mother to Alzheimer. That his family is economically unstable as the deceased was the financial pillar of the family. That he had a child with another woman that he used to provide for. That they have rejected the accused person’s plea for forgiveness whom they want jailed so that it can serve as a lesson for other people.
9. Community views were obtained from the chief, Lunga Lunga location and Chairman of Keroka where both the victim and accused hailed from. The accused was stated to have been a violent and aggressive person especially after taking drugs such that they believed that she had a mental problem. To them, her character having not changed only a custodial sentence could fully rehabilitate her.
10. Following the social inquiry carried out it was recommended that the accused would benefit from both custodial and non-custodial sentences for purposes of being rehabilitated. It was also noted that both the deceased and the accused used to abuse drugs.
11. Section 205 of the *Penal Code* stipulate that:

Any person who commits the felony of manslaughter is liable to life imprisonment.
12. I am called upon to consider granting the accused a non-custodial sentence. Factors to be considered in exercising discretion in that respect are set out in the *Judiciary Sentencing Guidelines*. Paragraph 7.19 subsections (1), (4),(5) and (6) as follows:
 - (1). Gravity of the offence: In the absence of aggravating

circumstances or any other circumstance that render a non-custodial sentence unsuitable, a sentence of imprisonment should be avoided in respect to misdemeanors.



- (4). Character of the offender: Non-custodial sentences are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
 - (5). Protection of the community: Where there is evidence that the offender is likely to pose a threat to the community; a non-custodial sentence may not be the most appropriate. The probation officer's report should inform the court of such information.
 - (6). Offender's responsibility to third parties: Where committing an offender to a custodial sentence is likely to unduly prejudice others, particularly vulnerable persons, who depend on him/her, a court should consider a noncustodial sentence if, in light of the gravity of the offence, no injustice will be occasioned. Information on the offender's responsibility to third parties should be substantiated.
13. The principle of proportionality of punishment enjoins the court to consider sentence along with the accused behavior and participation as well as the severity of the offence.
 14. Paragraph 3.1 (f) the sentencing guidelines that refers to the principle of Proportionality provides that: 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.
 15. A consideration of circumstances that surrounded the occurrence of the offence show that the accused took a countermeasure that involved using force to defend herself from battery. It is noted that previously she had been assaulted and injured such that she ended up in hospital.
 16. Looking at comparative decisions, in the case of *DKL vs Republic* (2014) Eklr where the appellant who was 17 years when he stabbed the deceased but was over 18 years at the time of sentencing, the Court of Appeal sentenced him to 10 years imprisonment. The court argued that the appellant could not be released to the society without being brought to terms with consequences of his action.
 17. In the case of the *State vs Truphena Ndonga Aswani* (2021) Eklr, where the accused had been a victim of torturous domestic and gender-based violence prior to killing the deceased and was silenced into accepting beatings; Aburili J found that she did not deserve to be punished by way of custodial sentence.
 18. The averment that when the accused is under the influence of drugs or some substance, she becomes violent and aggressive having not been rebutted, this calls for rehabilitation so as to be restored to normal life. This can only be done when incarcerated in the correctional facilities at the outset.
 19. For reasons given, I sentence the accused to five (5) years imprisonment, a sentence that will be effective from July 14, 2021, having taken into account time spent in custody; and upon release she will be under probation supervision for a period of two(2) years.
 20. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 18TH DAY OF APRIL, 2023.

L. N. MUTENDE

JUDGE



In The Presence Of:

Accused

Ms. Ogweno for the State

Mr. Mwale for Accused

Court Assistant – Mutai

