



**Republic v Mwajawali (Criminal Case E002 of 2021)
[2023] KEHC 3030 (KLR) (6 April 2023) (Sentence)**

Neutral citation: [2023] KEHC 3030 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E002 OF 2021
EM MURIITHI, J
APRIL 6, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

ERIC MURIITHI MWAJAWALI ACCUSED

SENTENCE

1. The accused person who had been charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#), was convicted for the lesser charge of manslaughter c/s 202 as read with 205 of the [Penal Code](#) on his own plea of guilty upon a plea bargain agreement between him and the Prosecution.
2. The facts of the case which he accepted as true before his conviction are set out in paragraph 9 of the Plea Bargain Agreement as follows:

“

- “9. This is a case of murder contrary to section 203 as read with section 204 of the penal code. The brief circumstances surrounding this case are that on December 5, 2020 at around 1830 hours Faith Mpinda was visited by the deceased at her residence. The accused arrived later and met the deceased together with Faith Mpinda. While heading towards his house he told them “so you are still there, we shall know whether you are among the boys born here so that you be bringing your relatives here.” Furthermore, he told the deceased that he would kill her.

Suddenly the accused picked a panga and started chasing the deceased and Faith Mpinda. The accused caught up with both of them where he cut the leg of the deceased. Faith Mpinda while blocking herself from the panga, the accused inflicted a cut on her right thumb and



fore thumb. From the loud screams of the deceased and Faith Mpinda, village members came to the scene and disarmed the accused. Subsequently a report was made at Ntharene police post and the deceased and Faith Mpinda were escorted to Kanyakine sub-County hospital. The deceased was treated and discharged but was required to proceed for further treatment at Consolata mission hospital.

On December 6, 2020 the deceased went to Consolata hospital where the doctor told her that the wound had affected the bone and as such Kshs 100,000 is required to start treatment.

On December 8, 2020 the deceased wound had worsened and was taken to Orsola mission hospital where she was admitted in critical condition.

Unfortunately, the deceased passed on December 13, 2020 while still undergoing treatment.

Investigation in this matter ensued where police visited the scene of the crime and photographs were taken. A post-mortem was conducted and upon examination the cause of death was Septicemia to the infected cut wound. The accused was immediately arrested and arraigned before court.”

3. In urging a custodial sentence, the Prosecution Counsel pointed to negative Probation Officer’s presentence report, the facts of the case and the type of weapon used and the circumstances of death, indicating failure to secure ample treatment upon injury leading death from as postmortem report shows, Septicemia secondary to infected cut-wound, as follows–

“The Presentence report recommends that accused is not suitable for non-custodial sentence. A dangerous weapon was used which is a panga which inflicted fatal injury. The Deceased was admitted in critical condition at Orsola Mission hospital on December 13, 2020 where she passed on. The accused did not offer any financial help to the deceased. His character after he committed the heinous crime. The deceased could have recovered if she received ample treatment but was unable due to financial constraint. I pray for custodial sentence.”

4. Counsel for the Accused only asked the court to be lenient in sentencing no doubt overwhelmed by the gravity of the attack leading to the death of the deceased herein.
5. With appropriate caution against wholesale reliance on a probation officer’s report which had not been tested through cross-examination and to which accused had no opportunity to comment, as counselled by the Court of Appeal in *Kyalo v R* (2009) KLR, the court has noted the conclusion of the Presentence Report as follows:

“Your honour, the offender before this honorable court is a youth aged 29 years. He has a fixed abode and is well known to the community and the administration. He has no previous records but has an ongoing matter of causing grievous harm, together with his brother in the PM’s court in Nkubu, The offender is single and has no dependents. Before arrest and charge, he used to do casual jobs and farming. Findings of my social inquiry revealed that there has been a long standing feud over land matters between ‘the offender and his sister in-law. The offender together with two of his brothers had severally tried to banish their sister in-law from the family to no success. On the material day, the offender and his brother namely Anthony Mwiti attacked the sister in law’ (Faith Mpinda) and grievously harmed her: Purity Kooru (victim) who was working as a casual in the homestead came to help Faith Mpinda. The offender attacked her as well, cutting her in the leg with an axe. She was rushed to hospital but succumbed to the injuries after about a week. The offender is



poorly related and .integrated within his immediate family and community at large. They alleged that he has been a trouble maker in the society due to his violent conduct to his kin, illicit brewing and theft of fowls in the community. The community members interviewed categorically stated that the offender shouldn't be considered for a non-custodial sentence. They stated that the offender committed the offence deliberately since he had on several. Incidences been threatening to kill. The primary-victim is deceased. However, secondary victims, the mother and the extended family-members were interviewed. The mother; who resides in her family's inherited land, and a stone throw away from the. offender's house declined to give her sentiments on the offender as well as her safety concerns. She looked deeply stressed and has resorted to0 alcoholism to cope with the trauma occasioned by the incident, and losing her daughter.

The' offender on his part didn't show remorse but instead tried to justify his action.. He narrated that he found the-sister in-law and the late victim encroaching on his-farmland and upon questioning, they attacked him. He defended himself' from'the attack and the incident happened. His family members stated that the offender, together with two of his brothers, .have been brewing trouble and issuing endless threats to kill if anyone questioned their doings: They were against the offender's release on a noncustodial sentence.”

6. Indeed, the accused confirmed the findings of the Probation Officer when in mitigation the accused without remorse asserted that it was the deceased “who came and started a fight after I cut bananas on my shamba [and] she cut me on the head with a panga. My other brother Antony Mwiti came and asked why she was fighting me. He was also attacked and the fight increased. As the fighting went on wife of the deceased [brother] came and she was also cut and she reported that we cut her with Antony Mwiti....”
7. It is the critical role of sentencing that the court does address the objective of deterrence as well as reformation and rehabilitation of the particular offender, especially noting the many cases of killings resulting from domestic disputes country-wide over land and related resources, and it is a legitimate consideration in penal law to deter the commission and repeat of offences.
8. The accused, a youthful school dropout and casual labourer of 29 years, stands to benefit from the reformation and rehabilitation made possible under prison discipline and attendant trade-skills acquisition placing him in good stead for his future engagement in socioeconomic activity for personal development and nation building.
9. The court considers that an imprisonment term of eight (8) years will serve the justice of the case.
10. The court notes that the accused has been in custody since arraignment on 6/1/2021 and the said period of pre-trial detention shall be taken into account in the computation of the sentence of imprisonment in terms of section 333(2) Proviso of the [Criminal Procedure Code](#).

ORDERS

11. Accordingly, for the reasons set out above, the court having convicted the accused on his own plea of guilty for the offence of manslaughter c/s 202 as read with 205 of the [Penal Code](#) and having taken into account the pre-trial detention period of 2 years 2 months that the accused was in custody before conclusion of his trial, the Court makes the following orders on Sentence: -
 1. The Accused person Eric Muriithi Mwajawali is sentenced to imprisonment for Eight (8) years for the offence of manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#).



2. The sentence of imprisonment for Eight (8) years shall commence on 6/1/2021 when the accused was arraigned in court and remanded to await his trial.

Order accordingly.

DATED AND DELIVERED ON THIS 6TH DAY OF APRIL, 2023.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Masila, Principal Prosecution Counsel for the DPP.

Ms. A. Gitonga Advocate for the Accused.

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