



**Republic v Gatuna (Criminal Case 9 of 2018)
[2023] KEHC 17255 (KLR) (10 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17255 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 9 OF 2018
RM MWONGO, J
MAY 10, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

SIMON GITU GATUNA ACCUSED

JUDGMENT

1. The Accused is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars are that on June 25, 2018. The particulars are that on the 2nd day of June, 2018, at Rukanga Mwea West Sub County, he unlawfully murdered Rehema Auma Olenyo.
2. He was arrested on June 4, 2028, and arraigned in court on June 5, 2018. The court ordered that his mental state be examined to ascertain his fitness to stand trial. Two medical reports indicated that he was not fit to stand trial, and the court committed him to Mathari Mental Hospital on December 3, 2018. The accused was finally able to take plea on October 28, 2019, when he pleaded not guilty to the offence. The hearing commenced on the same day.
3. Due to the passage of time, four prosecution witnesses were heard that day, including the Pathologist Dr Kamotho Watenga (PW 1). The doctor produced the post mortem report in court as PExhibit 1. According to the doctor, on examination of the body, he found ten stab wounds on the body mainly concentrated on the deceased's chest and back. The doctor determined the cause of death as: "Hemorrhagic shock secondary to excessive bleeding as a result of multiple stab wounds". He noted that the loss of blood due to the multiple stab wounds caused with a sharp object. Thereafter the hearing adjourned.
4. The defence counsel filed an application for bail which was declined in a ruling of August 13, 2020. The hearing did not recommence for a long while and, in December, 2021, the defence counsel appointed by the state passed on.



5. On February 1, 2022, the defence indicated that they wished to enter into a Plea Bargaining Agreement (PBA). It took the prosecution some time to find and engage with the victim's family, and eventually they agreed to engage in the PBA discussions.
6. On March 9, 2022 the defence proposed a plea bargain agreement. The matter was given a date for Plea Bargain Agreement status on May 16, 2022 to avail the parties time to consider the proposal. Eventually, on February 6, 2023, the PBA agreement was presented in court pursuant to Section 137A (i) and 137B of the *Criminal Procedure Code*. The Plea Bargain Agreement, which was dated June 21, 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, adopted the PBA.
7. The facts of the case as set out in the PBA and garnered from witnesses who testified, are as follows: That on June 2, 2018 at about 11.30am the deceased was at her place of work at the house of Elisha Gatuna Musa.

On June 2, 2018 at about 11.30 am, the deceased (Rehema Auma Olenyo) was at her place of work at the house of Elisha Gatuna Musa then aged 83 years PW4. The deceased had had been employed by him and had only worked four months.

PW4 (Elisha Gatuna Musa) lived with the accused (Simon Gitu Gatuna) his son and who always demanded to be served by the deceased. The deceased would decline to serve him as all her effort were dedicated to PW4 who was her employer and more so elderly.

The decline by the deceased to serve the accused caused him anger and resentments and, on the June 2, 2018, while the deceased was attending to PW4 (Elisha Gatuna Musa), the accused approached the deceased while armed with a knife and demanded to be served.

As usual, she was hesitant and the accused stabbed her nine times on the chest and back.

PW2 (Phydels Mumbi) testified that on June 2, 2018, she heard screams emanating from her grandfather's house and when she rushed to see what was happening, she stumbled on the deceased body lying in a pool of blood. She noticed the accused (Simon Gatuna) stalking her from behind and she tried to call the father.

PW4 (Elisha Gatuna Musa) states that he heard the screams from the house where he had left the deceased (Rehema Auma Olenyo). That as he was responding to see what was happening, the accused (Simon Gitu Gatuna) came from the house and passed him without talking and it was only when he arrived at the scene that he was greeted with the gustily sights of the deceased on the floor full of blood.

That it was PW2 who called the father who in turn called the police and by the time they arrived, the accused (Simon Gitu Gatuna) had disappeared. That the police found the knife full of blood in the sink which they took as a murder weapon.

PW1 (Dr. Kimotho Watenga) who performed the post mortem noted the physical body of the deceased had ten stab wounds at the chest and at the back and concluded the cause of death was as a result of hemorrhagic shock secondary to excessive bleeding due to multiple stabs.

PW3 (Asha Sumba Anguria) identified the body on the June 11, 2018 as the daughter to the deceased.



PW5 (IP APS No. 206847 Edward Gikonyo Maina) of Rukanga AP post received the first report and arrested the accused (Simon Gitu Gauna and handed him over to PW6 (Chief Inspector Charles Lumatete) of Mwea Police who investigated and registered murder charges against the accused.

8. Upon the court being satisfied that the accused entered into the PBA voluntarily and in full competence, and that she understood her rights, the court convicted the accused with the offence of Manslaughter contrary to section 205 of the Penal Code. Mitigation proceeded immediately thereafter as the Probation Officer's Pre-sentence Report had been filed on September 22, 2022.
9. The defence counsel made the following submissions on mitigation. He stated that the accused was remorseful for the actions he had done on June 2, 2018, and sought forgiveness of the victim's family. Counsel stated that the accused is ready to take counselling lessons to deal with his substance abuse and anger management. He said the accused's family is ready to receive him and assist in his rehabilitation. He pointed out that the accused has been in custody since June 2, 2018, and seeks that the court would consider that period in his sentence. Finally, he sought that the court would take into account the Probation Officer's Report.
10. The state submitted that a 20-year prison sentence was recommended; that the accused disrespected his aged father who the deceased was caring for at the time of the incident that led to her death; that the deceased's family has suffered the loss of a bread winner; that although the accused has been in prison for the last five years, there is no evidence of his rehabilitation; that a prison sentence will assist with his rehabilitation and anger management.
11. The offence of manslaughter carries a penalty of a sentence of imprisonment for a maximum period of life imprisonment. Section 205 of the Penal Code provides as follows;

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

This means that this court clearly has the ability in law to mete a sentence on the accused through a spectrum of a sentence of one day's imprisonment to imprisonment for life.

12. I have carefully considered the mitigation of the defence and the state's submissions in this matter. I have to determine what sentence is appropriate for the accused taking into account the Judiciary Guidelines on sentencing and the guidelines proffered by the Supreme Court in the case of *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR which provided guidelines to be considered before sentencing. these are as follows:

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

1. Age of the offender;
2. Being a first offender;
3. Whether the offender pleaded guilty;
4. Character and record of the offender;
5. Commission of the offence in response to gender-based violence;
6. The manner in which the offence was committed on the victim;
7. The physical and psychological effect of the offence on the victim's family;
8. Remorsefulness of the offender;



9. The possibility of reform and social re-adaptation of the offender;
10. Any other factor that the Court considers relevant.
13. I have also considered the Probation Officer's Pre-sentence Report. The Report indicates that the accused was born and raised in Muranga where he completed his primary and secondary schooling. In 1992 he went to India to study a Bachelor of Arts degree, but did not complete it as he was deported back on allegations of involvement in drugs. he later completed a Diploma course from the Kenya Institute of Management.
14. The report indicates that the after the incident, the accused did not run away, and presented himself to the police. This may indicate a sense of remorse. Further, the community where he comes from indicted that he was of prior good conduct, and that there were no risks to his being released back. his family is supportive and willing to receive him and help him resettle.
15. The victim's family indicated that the couple had a history of quarrelling and noted that the deceased was a single mother raising three children in western Kenya. the children are still grieving and bitter and seeking some form of monetary compensation from the accused's family. his own attitude was that he was remorseful, had never intended to kill the deceased and he seeks leniency.
16. The Report makes the following conclusions and recommendations: That the accused has a fixed abode and has the support of his family; that he has no previous criminal record and is not viewed as a threat to the community; and that:

“The accused person is suitable for a non-custodial sentence and therefore, recommends a Probation Order, during which he shall benefit from counselling services in conflict resolution, anger management, drugs and substance abuse, and also facilitate reconciliation”
17. Taking all these matters into account, I must say that the from the postmortem report, it is clear that the multiple stab wounds on the accused's body indicate a level of violence used by the accused that was rather harsh. If his actions arose from anger, the outcome was quite horrific. From the postmortem report, the extent of the injuries was that they were multiple incised stab wounds 8cm and shallowest 4cm as follows:Right upper back - Incised 8cm and shallowest 4 cm. Stab wound 8 cm long.Left lateral mid-back- 3cm long stab wound - clean edgesRight midback 2 cm long stab wound - clean edges.Lower midback at the spine 2 cm long stab wound - clean edges.Right anterior shoulder stab wound 6 cm long - clean edges.Mid upper chest stab (sternal) stab wound 3 cm long - clean edges.Right breast stab wound medial to nipple 3 cm long - clean edges.Left breast stab wound 4 cm medial to nipple and 5 cm long with - clean edges.Left lower chest stab wound with extruding adipose 6cm long with clean edges.Left proximo - lateral back 3 cm long with clean edges.Respiratory system - stab wound on left fifth intercostal space.Bilateral hemothorax of approximately 100 mls - fracture of 7th rib left side.Stab wound on left eighth intercostal space.
18. These injuries are serious and ill intended.
19. I note that the accused has already spent four years and 11 months in prison. I have taken this into account in the sentence herein. There was no indication from the Probation Report that the accused had achieved or done anything of positive significance whilst in prison.
20. However, just before the reading of the judgment, the accused sought its arrest to enable him file testimonials of his engagement in Christian matters and learning whilst he was in prison. The court acceded. The certificates span a period from 2019 to 2022. He exhibited the following:a certificate earned in 2019 for the Philip Acts, 8 Bible Study,a certification of completion Bible courses in the



books of John & Ephesians and study in Divine Healing, a certificate of Achievement of Bronze level in completion of 6 sessions of Prison Project Philip. A certificate of completion of the Prisoner's Journey. The certificates reflect the focused and international character of the accused in his pursuit of spiritual wellness and harmony. I have taken his efforts here into account.

21. Accordingly, I hereby mete sentence as follows:

- a. The accused is sentenced to fourteen (14) years imprisonment with effect from the date of his first incarceration. Taking into account his entitlement to a one-third remission under the *Prisons Act*, he would serve a term of nine (9) years and 4 days imprisonment. However, he has already served 4 years and 11 months, should now serve the balance of 4 years and 5 days;
- b. The accused shall serve the final three (3) years of his remaining four-years and 5 days term as a non-custodial sentence engaged in a programme of community service designed and facilitated by the Probation Officer;
- c. During the period of the non-custodial sentence, the accused shall also be engaged in a programme of counselling which shall include elements of anger management, conflict resolution, drug and substance abuse and reconciliation.

22. Orders accordingly.

DATED AND SIGNED IN KERUGOYA THIS 10TH DAY OF MAY 2023.

.....

R. MWONGO

JUDGE

Delivered in presence of:

1. State Counsel: Mamba
2. Accused: Present in Court
3. Ombachi: holding brief for Makworo Accused
4. Court Assistant: Murage

