



**Republic v Munene (Criminal Case 7 of 2019)
[2023] KEHC 17253 (KLR) (8 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17253 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 7 OF 2019**

RM MWONGO, J

MAY 8, 2023

BETWEEN

REPUBLIC PROSECUTION

AND

JAMES NYAGA MUNENE ACCUSED

JUDGMENT

1. The Accused is charged with the offence of Murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence are that on the March 19, 2019, at Kianwe Village, Kiangai Sub-location in Kirinyaga West Sub - County she murdered John Mwangi Munene.
2. The accused was first arraigned in court on 8th April, 2019, and in absence of a psychiatric report, no plea was taken. Plea was finally taken on May 23, 2019, when the accused entered a plea of not guilty.
3. On February 10, 2022 the parties begun negotiating a Plea-Bargaining Agreement. On March 7, 2023 the parties confirmed to the court that a PBA had been concluded, and it was presented to the court pursuant to Section 137A (i) and 137B of the *Criminal Procedure Code*. Also presented in Court was a Court form for the recording of the PBA together with the Post-mortem Report.
4. Prior to the Court adopting the PBA, the accused was taken through his rights under section 137G of the *Criminal Procedure Code*. The court, being satisfied that the accused had understood the contents of the PBA and that she had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion, adopted the same.
5. The brief facts of the case as set out in the PBA are that on March 19, 2019, the accused, James Nyaga Munene, whose house is about 50 metres from that of John Mwangi Munene (deceased) approached him asking him why he had cut his bananas and sold them. He was holding a panga and went ahead to wrestle the deceased. They fought for a while and the accused managed to take the panga and cut the deceased on the forehead and left him for dead.



6. PW1 - Munene Kamara the father to both accused and deceased came home and found the deceased lying down in a pool of blood. Together with PW2 - Wakonyu Munene, PW3 - James Muriuki Kamara, and PW4 - Peterson Gachuhi Munene, they took the deceased to hospital at Karatina Hospital where he succumbed to his injuries on March 20, 2019.
7. The post mortem performed on the March 27, 2019 under death certificate No. 1111758 indicated that the deceased died due to severe head injuries secondary to multiple cut wounds.
8. The defence counsel proceeded with mitigation submissions. She submitted that the accused had no intention of killing the deceased. She was trying to protect her child whom the deceased had threatened to kill. That the deceased came armed with a panga and rungu and accused the deceased of stealing. That a fight ensued resulting in the injuries and death of the deceased which was not pre-meditated.
9. The prosecution submitted that the accused did not have previous criminal record. Further, she should deal with her anger as a life was lost due to failure to manage her anger. He adopted the proposed sentence in the Plea Bargain Agreement. It recommends for a custodial sentence of 4 years.
10. The Probation Report indicates that the accused is 64 years of age; that the accused is a last born in a family of five adult siblings. The accused separated from her husband and has three children and two grandchildren currently living with her sister. Prior to her arrest, she engaged in casual labour; the community did not object to his release; was of good conduct prior to his arrest; that he had no criminal history and that the victims no longer harbour any bitterness towards the accused.
11. The Probation Report recommends a non-custodial sentence for the accused during which he would be accorded guidance and counselling in conflict resolution and anger management, drugs and substance abuse.
12. The applicable law on sentence for the offence of manslaughter is found under the provisions of Section 205 of the *Penal Code* which provides:

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

The section provides for the maximum sentence that is life imprisonment.

13. The supreme Court decision in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR held that in sentencing, a court should take into account the mitigating circumstances before sentencing, and that the following matters should guide the court:

“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.
14. Taking into consideration the accused's mitigation, the above sentencing guidelines and the Probation Report that recommended for a non-custodial sentence, the accused satisfies the criteria for a reduced sentence from the maximum life imprisonment. I have also taken into account that the accused has been in prison for the last four (4) years; and the nature of the incident which was a fight concerning land.
15. Accordingly, I sentence the accused to twelve (12) years imprisonment commencing from the first date of incarceration. I also take into account that the accused would be entitled to remission of one third of his sentence which would leave a balance of 8 years of the sentence term, from which term 4 years spent in prison shall be deducted; leaving four (4) years out of the term outstanding.
16. The accused shall serve the last three (3) years of his sentence as a non-custodial sentence. During that period, the accused shall:
 - a. Be engaged in a Community Service Programme designed and facilitated by the Probation Officer.
 - b. Undertake a programme of counselling and guidance to enable him to live well again.
17. Orders accordingly.

DATED AND SIGNED IN KERUGOYA THIS 8TH DAY OF MAY 2023

R. MWONGO

JUDGE

Delivered in the presence of:

1. State Counsel - Mamba
2. Kiragu - holding brief for Wambui for accused
3. Accused - Present in Court
4. Mr. Murage - Court Assistant

