



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Njeri (Criminal Case E026 of 2021)
[2023] KEHC 17229 (KLR) (8 May 2023) (Sentence)**

Neutral citation: [2023] KEHC 17229 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE E026 OF 2021
RM MWONGO, J
MAY 8, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

VICTOR MUNYI NJERI ACCUSED

SENTENCE

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 night of 29th day of April, 2021, at Murugara Shopping Centre, Mukore Location in Kirinyaga County he murdered Vincent Munene Njeri.
2. The accused was arraigned in court on May 12, 2021, although plea of not guilty was eventually entered on June 15, 2021. on December 13, 2021 parties informed the court that it was intended to commence Plea Bargaining agreement discussions.
3. A Probation Officers Report was filed on March 3, 2023. Discussions culminated in a PBA on February 7, 2023.
4. On February 7, 2023, 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.
5. 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.



6. The brief facts of the case as set out in the PBA are that on the deceased and the accused were brothers, the accused being the first born. on April 29, 2021 at about 9.00pm, they met at their mother, Beatrice Njeri's (PW1's) home. While chatting, the accused asked the deceased why he had taken his trouser without his permission. He accused him of always taking and wearing his clothes. The mother intervened when the issue flared into an argument.
7. Minutes later, the accused went to his house and the deceased followed with a kitchen knife trying to hand it over to the accused. A fight ensued, and before she knew what was going on, the mother noticed the deceased holding his brother with blood oozing from his body. She raised the alarm and neighbours came rushing. PW2, Benson Wachira Karani, who had been there would have testified in corroboration of PW1.
8. The post mortem report, written by the Medical Officer, Kerugoya County Referral Hospital, Dr. Karomo indicates the cause of death was due to "penetrating chest injury leading to massive haemorrhage following assault with a sharp object". On examination, the doctor found two penetrating chest injuries at the right 6th intercostal space 3cm long and right 1st intercostal space lateral to mid-clavicular line 3cm long.
9. At the hearing on March 7, 2023, the court, having noted the facts, and being satisfied that that accused signed the PBA voluntarily and in full legal capacity, thereupon convicted him with the offence of manslaughter contrary to section 205 of the [Penal Code](#).
10. The defense counsel proceeded with mitigation submissions. She submitted that the accused was remorseful for having caused the death of his younger brother, that he appreciated the gravity of his actions; that though he caused the deceased's death it was in self defence; that he had sought forgiveness from his mother; and that he is ready to be received back into the society. He seeks to be granted a non-custodial sentence.
11. The prosecution submitted that the accused did not have a previous criminal record. Further, that he should deal with his anger issues whilst serving a custodial sentence where he can also acquire some skills and be taken through a rehabilitation programme.
12. The defence objected to this approach stating that the accused could learn skills whilst serving a non-custodial sentence, an order the court could give; pointing out that the accused was barely eighteen years when he committed the offence.
13. The Probation Report indicates that the accused is a young man and has not acquired any skills and has no formal training. He is unmarried, has no children, and is therefore at the commencement of his life. The probation officer pointed out that the killing was an accident and not pre-meditated; that the community view the accused as hardworking, of good conduct, and he had co-existed with people well. As the accused has been out on bond, no harm is likely to befall him.
14. According to the Probation Report, the victim is the mother, who stated that the two had been raised together and loved each other much; that she had forgiven the accused and still loves him; and that she pleaded that the accused be given back to her and his uncles and they would assist him to resettle and reintegrate back into the family.
15. The Probation officer concluded with his recommendation as follows:

"It is my informed opinion that the accused person is suitable for a non-custodial sentence and therefore recommend community service order at Kathambi Health Centre"



16. 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.

17. The court has taken into consideration the circumstances of the incident, in that the convict stabbed his deceased brother after a mundane argument about clothes; that the deceased is the one who went with the knife to the accuse, thus provoking the reaction. As such the killing was not pre-meditated.

18. 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.

19. 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 one year.

20. Accordingly, in addition to the one year spent in incarceration, I hereby sentence the accused to a non-custodial sentence of three (3) years with effect from the date herein. During that period, the accused shall:

- a. Be engaged in a Community Service Programme designed and facilitated by the Probation Officer at Kathambi Health Centre;
- b. Undertake a programme of counselling and guidance designed by Probation Officer to enable him to live well again.
- c. Should the accused fall afoul of the law and be convicted of any offence, the non-custodial sentence will be suspended and he shall serve a custodial sentence to be determined by the court.

21. Orders accordingly



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

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R. MWONGO

JUDGE

Delivered in the presence of:

- 1.State Counsel: Mamba**
- 2. Kiragu: for Accused**
- 3. Accused: Present in Court**
- 4. Murage: Court Assistant**

