



Republic v Munene (Criminal Case 7 of 2022) [2023] KEHC 3842 (KLR) (4 May 2023) (Sentence)

Neutral citation: [2023] KEHC 3842 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 7 OF 2022
RM MWONGO, J
MAY 4, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

ALICE WAMBURA MUNENE 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 April 7, 2022, at Riamugaa Village, Kiine Location in Kirinyaga West Sub-county she murdered Samuel Kinyua Maina.
2. The accused was arraigned in court on April 25, 2022, when she pleaded not guilty to the offence. Counsel for the prosecution and the defence noted that this was a matter in which a Plea Bargaining Agreement could be explored. Parties were permitted to explore a PBA and report at the next mention, and the court ordered a Probation Officers Report be filed.
3. In court, it was also pointed out that the accused had a ten-month old child who was permitted to be brought to stay with the mother in prison.
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 March 27, 2022 at around 9.00 pm the deceased, Samuel Kinyua, arrived home at Riamugaa village, Kiine location in Kirinyaga West Sub-county. He was drunk and found the accused, his aunt, cooking and he started insulting her, calling her a dog, and claimed that she had stolen his clothes and given them to his children. He then dashed into his house some ten metres away and grabbed a panga and took the accused's child hostage threatening to smash his head.
7. He then grabbed the boy's private parts, which made the boy scream as he was healing from circumcision. This attracted the attention of the accused, who was infuriated by what she was seeing. She immediately tried to rescue her son and struggled with the deceased who was still holding the panga. She snatched the panga from him and cut him on the head and left hand. He collapsed in a pool of blood. The deceased succumbed to the injuries at Karatina District Hospital on March 28, 2022. The accused was arrested at her home the following day.
8. According to the prosecution, the fight was witnessed by PW 1 Margaret Wangui Muthike, a neighbor who found the two in a fight, and screamed raising an alarm. The deceased was still lying in a pool of blood when Charles Karungu Mwangi the area head of Nyumba Kumi, arrived at the scene after being informed by the area Chief that there had been a fight in the home and a person had been stabbed.
9. The post mortem report, written by Dr Stephen Nderitu the Senior Medical Officer, Karatina Sub-county Hospital indicated the cause of death was due to 'severe head injuries secondary to blunt and sharp trauma to the brain'. On examination, the doctor found a stitched cut wound on the head measuring 10cm in length, and a stitched cut wound on the right index finger also about 10cm in length.
10. The Court, having noted the facts, and being satisfied that that accused signed the PBA voluntarily and in full legal capacity, thereupon convicted her with the offence of manslaughter contrary to Section 205 of the Penal Code
11. The defense 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. She regrets causing the death of the deceased. She has three children and two grandchildren who depend on her. She is a 1st offender and prays for a non-custodial sentence.
12. 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.
13. The Probation Report indicates that the accused is 42 years of age and 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.
14. The accused stated that she returned to her matrimonial home and found the deceased harassing everyone. She fell prey to the harassment. She acted in self-defense as the deceased had earlier assaulted her.
15. The accused is not viewed as a threat to the community and is not likely to be harmed by members of the public should he be released. She has a supportive family that is willing to assist him reintegrate to the community. The victim had become a nuisance in the community due to his threats and insults to members of his family. The victim's mother had relocated from the homestead owing to his threats. He did not warrant death but to be arrested by the authorities.



16. The Probation Report recommends a non-custodial sentence for the accused during which she would be accorded guidance and counselling to live uprightly again.

17. 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.

18. The court has taken into consideration the aggravating circumstances in that the convict used a deadly weapon namely a panga in committing the offence. However, the facts reveal that she in fact snatched the panga from the deceased who was threatening to harm her son. As such the killing was not premeditated, and she was definitely reacting to provocation and the need for the defence of her family.

19. In her mitigation, the accused stated that she never intended to kill the deceased. She acted in self-defence.

20. 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.

21. 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 sentence. I have also taken into account that the accused has been in prison for the last one year.

22. Accordingly, in addition to the one year spent in imprisonment, 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;
- b. Undertake a programme of counselling and guidance to enable her to live well again.



23. Orders accordingly.

DATED AND SIGNED IN KERUGOYA THIS 4TH DAY OF MAY, 2023.

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R. MWONGO

JUDGE

In the presence of:

Mariga - holding brief for Jayo for Accused

Mamba - for State

Accused - Present in Court

Court Assistant - Murage

