



**Republic v Koech (Criminal Case E044 of 2021) [2023] KEHC 3973 (KLR) (2 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 3973 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE E044 OF 2021**

**HM NYAGA, J**

**MAY 2, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**CHRISTINE AKHNESINWA KOECH ..... ACCUSED**

**RULING**

1. The accused was initially charged with murder contrary to section 203 as read with 204 of the [Penal Code](#). The particulars were that on August 20, 2021 at Taragonik village in Kuresoi location, Kuresoi North-sub county within Nakuru county within the Republic of Kenya she murdered Jacinta Kanuthu Mwaura.
2. When accused was arraigned in court on September 9, 2021 she pleaded not guilty to the charge. Subsequently, on March 29, 2022 the defence sought to engage in a plea bargaining agreement, to which the prosecution consented. Thereafter, the parties entered into a plea bargaining agreement pursuant to the provisions of section 137 of the [Criminal Procedure Code](#) duly signed on February 28, 2023, respectively.
3. This court examined the accused in accordance with section 137 of the [Criminal Procedure Code](#) and established that the plea bargain was unequivocal and independent. The charge of manslaughter was then put to the accused who pleaded guilty and subsequently accepted the facts as set out in the plea bargain agreement and stated before the court, where upon the court convicted the accused on her own plea of guilty.
4. The post mortem report and the panga used to inflict injuries on the deceased were produced as exhibits No 1 and 2 respectively.
5. The defence counsel, Mr Ooga, filed submissions on mitigation in which he prayed that the accused be admitted on non-custodial sentence. He submitted that the accused extremely regrets her actions



and is remorseful. That upon arrest the convict was placed under medication for depression for two weeks, she was not in control of herself and thus should be treated with leniency.

6. He further submitted that the convict is 27 years old with school going children and prior to her arrest and incarceration, the children were dependant on her as her husband, Rodgers Koech has been in custody since the year 2019 serving a custodial sentence of 7 years. That in the absence of both parents, the children have been left destitute without love and parental care of either parent.
7. The counsel cited the case of *Julius Ambani v Republic* [1989] eKLR where the court stated that sentences imposed on accused persons must be commensurate to the moral blameworthiness of the offender. He contended that it is worth noting that the convict after the commission of the offence was heard shouting “damu ya yesu inatiririka, damu ya yesu inatiririka, ishindwe, nimeuwa nyoka” and submitted that the convict suffered a moment of temporary insanity and thus cannot be morally blamed for the offence.
8. He argued that a person that cannot appreciate the consequences of their actions should not be punished if those actions happens to be criminal acts. He asked this court to find that as a result of temporary insanity, the convict cannot be criminally culpable and thus an imprisonment would not meet the ends of justice.
9. The prosecution on its part proposed a custodial sentence of 15 years on grounds that the deceased was not armed and she did not provoke the accused at all and that the accused inflicted several cuts on the deceased.
10. The Supreme Court in *Francis Karioko Muruatetu & another v Republic*, petition No 15 of 2015, as a guide in sentencing held that:

“(71) ...the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- 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. remorsefulness of the offender;
  - g. the possibility of reform and social re-adaptation of the offender;
  - h. any other factor that the court considers relevant.
11. The Supreme Court in *Muruatetu case* (supra) appreciated that:

“In Kenya, many courts have highlighted the principles of sentencing. One such case is the High Court criminal appeal decision in *Dahir Hussein v Republic* criminal appeal No 1 of 2015; [2015] eKLR, where the High Court held that the objectives include: “deterrence, rehabilitation, accountability for one’s actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim.” The 2016



Judiciary of Kenya Sentencing Policy Guidelines lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

“Sentences are imposed to meet the following objectives:

1. Retribution: to punish the offender for his/her criminal conduct in a just manner.
2. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. Rehabilitation: to enable the offender reform from his criminal disposition and become a law abiding person.
4. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages. criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.
5. Community protection: to protect the community by incapacitating the offender.
6. Denunciation: to communicate the community’s condemnation of the criminal conduct.”

12. I have considered the facts of the case, the submissions by the state counsel and the mitigation by the defence counsel.

13. According to the facts of the case, the deceased was the convict’s biological mother. On August 19, 2021 the deceased upon request by the accused accompanied her to her house in order to take care of her as she was having bad dreams. On August 20, 2021 at around 2.00am the accused attacked the deceased using a panga and did cut her severally on the head while shouting “damu ya yesu inamwagika”. The neighbours who heard the commotion rushed to the scene where they found the deceased lying dead in a pool of blood with multiple cuts on her head. The accused was shouting saying that she had killed a snake. The neighbours called the police who visited the scene and arrested the accused.

14. The post mortem examination conducted on August 26, 2021 revealed that the deceased died as a result of severe head injury due to trauma to the head by a sharp object.

15. In terms of section 202 as read with section 205 of the *Penal Code*, the accused upon being convicted is subject to serve life imprisonment.

16. According to the counsel for the accused, she was suffering from a mental disorder at the time of committing the offence. If that is the case, then the provisions of section 166 of the *Criminal Procedure Code* will apply. The section states as follows;

- “(1) Where an act or omission is charged against a person as an offence, and it is given in evidence on the trial of that person for that offence that he was insane so as not to be responsible for his acts or omissions at the time when the act was done or the omission made, then if it appears to the court before which the person is tried that he did the act or made the omission charged but was



insane at the time he did or made it, the court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane when he did the act or made the omission.

(2) When a special finding is so made, the court shall report the case for the order of the President, and shall meanwhile order the accused to be kept in custody in such place and in such manner as the court shall direct.”

17. From the reports filed in court at the time of taking plea, the accused was found to be of sound mind and was fit to plead. Further medical reports ordered by the court had the same findings. Nothing was mentioned about the time of commission of the offence, which would then have allowed the court to invoke section 166 of the *Criminal Procedure Code* cited above.
18. In the absence of such report, then it is to be presumed that the accused was of sound mind. However, the circumstances seem to suggest that the accused was possessed of some mental condition that made her shout the words that she is alleged to have uttered.
19. The court is enjoined to consider the blameworthiness of the accused in reaching the appropriate sentence. See *Ambani v R* (supra). The accused’s person state of mind at the time of commission of the offence may have diminished her blameworthiness. The court has to tread carefully so as not to punish an accused who was not in control of her mental situation at the material time, even if that is not documented. The lack of documentation of her condition is not her fault and she should not be made to suffer for it.
20. In the light of the above circumstances and the mitigation, I will call for a comprehensive pre-sentence report to enable me give orders that will manage the accused effectively. In particular, I would want to receive the views of the family members, who are the ones who suffered the loss of their loved one.

**Dated, Signed and Delivered at Nakuru this 2<sup>nd</sup> day of May 2023.**

**H. M. NYAGA**

**JUDGE**

**In the presence of;**

C/A Jeniffer

Ms Murunga for state

Mr. Ooga for accused

Accused present

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