



**Republic v Nyaga (Criminal Case 9 of 2017) [2023] KEHC 3844 (KLR) (2 May 2023) (Sentence)**

Neutral citation: [2023] KEHC 3844 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL CASE 9 OF 2017  
RM MWONGO, J  
MAY 2, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**MARYANN WAMBUI NYAGA ..... ACCUSED**

**SENTENCE**

1. The Accused is charged with murder contrary to section 204 of the *Penal Code*. The particulars of the offence in the charge sheet are that on 9<sup>th</sup> September, 2017, at Murinduko village within Kirinyaga County, she unlawfully murdered Elijah Thinyai Muriuki.
2. On 2<sup>nd</sup> October, 2017 she pleaded not guilty to the offence. The hearing proceeded on 17<sup>th</sup> April 2018 and three prosecution witnesses had testified by 5<sup>th</sup> November 2018. The hearings stalled, and on 15<sup>th</sup> November, 2021 the defence proposed a Plea-Bargaining Agreement (PBA). The prosecution agreed to a PBA on 9<sup>th</sup> February, 2022.
3. Ultimately, the parties reached a consensus on the matter, and a PBA dated 27<sup>th</sup> September, 2022 was availed in court. The court noted some errors and directed they be corrected. On 19<sup>th</sup> December, 2022, the court ordered a Probation Officer's Pre-sentence Report to be availed to the court, which was done on 6<sup>th</sup> February, 2023.
4. The concluded PBA was placed before the court on 7<sup>th</sup> February, 2023. In pursuance of the provisions of Section 137A (i), 137B and 137G of the *Criminal Procedure Code*, the Court adopted the PBA. A completed Court Form for the recording of the PBA was signed after the accused had confirmed she understood all her rights under Section 137G CPC.
5. The facts of the case as set out in the PBA are that on 9<sup>th</sup> September, 2017, at 3.00 a.m. the deceased, who was the accused's lover, visited the accused at her rented house at Murinduko village, Kirinyaga County. He forced her to open the door as he had been away for over one year. After he entered the house, a quarrel ensued when the deceased inquired to know who else had been visiting her in his



absence. He was wielding a panga, and being apprehensive, she tried and successfully snatched it from him. A melee ensued, and she cut him on the forehead during the struggle.

6. The deceased was drunk, and the accused realized he had sustained some injuries on his forehead. She persuaded him to seek medical attention but he refused. He left the same night on a motorcycle. She did not inform anyone about the accident. A week later, she was arrested by members of the public and handed over to Piai Police Post and later to Wang'uru Police Station.
7. The post mortem report indicated that the cause of death was due to raised intracranial pressure following long-standing intracranial hemorrhage due to deep cut wound to the head.
8. 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*.
9. The defence gave mitigation immediately thereafter on 7<sup>th</sup> February, 2023, as follows: That the accused is a first offender, is remorseful and prayed for leniency. Counsel pointed out that the accused had been in custody for close to 6 years since 2017. She has one child aged 17 years and is a single mother. The circumstances of the event were that she was acting in self-defense. Further, that the probation report is favourable, and she prayed for a non-custodial sentence of 3 years.
10. The prosecutor submitted that he would be guided by the Probation Officer's Report especially the observation and conclusion, therein. He adopted the proposed sentence in the Plea Bargain Agreement, which recommended a 3-year non-custodial sentence.
11. The Court has carefully considered the facts and circumstances of the offence and the mitigation by the accused. It has also perused the Probation Report which indicates that the accused is 33 years old and is a second born among five siblings. She had been a lover of the deceased from 2016. The couple was involved in constant domestic fights and on and off separations. She has a very supportive family in Murinduko village that is willing to assist her reintegrate to the community. The victim's family said they had forgiven the offender and were not opposed to her release back to the community. The local administration at Murinduko where she is expected to settle gave a positive report and stated that the accused and her entire family did not have anything detrimental to peaceful co-existence within the community.
12. The Probation Report recommends the accused for a non-custodial sentence during which she would be accorded guidance and counselling to live uprightly again. Further, it recommends a Community Service Orders programme to serve at Murinduko Chief's office.
13. 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'
14. 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 the killing was not premeditated; that the accused was in fact in a melee with the deceased who had attacked her with the panga. She was in fact acting in self-defence in the fight.
15. The Supreme Court decision in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR provided guidelines to be considered before sentencing. these are as follows:

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.

16. I have taken into consideration the above sentencing guidelines, the Judiciary Policy on Sentencing, and the recommendation in the Probation Report for a non-custodial sentence performing community service, coupled with a programme of counselling.

17. I have also noted that the accused has been in custody for six (6) years and seven (7) months since 27<sup>th</sup> September, 2017, when she was arraigned in court. I think she has learned her lesson during this period of incarceration.

18. In my view, the accused satisfies the criteria for a reduced sentence rather than the maximum sentence of life imprisonment.

19. Accordingly, in addition to the 6 years and 7 months already served in custody, I sentence the accused to a further three (3) years non-custodial sentence on the following terms:

- a. During the said 3 years the accused shall be engaged in a Community Service programme approved by the Probation Officer at Murinduko Chief's Office under the supervision of the Chief;
- b. During the said period the accused shall attend a programme of guidance and counselling designed and facilitated by the Probation Officer, Kirinyaga County;
- c. Should the accused fall afoul of the law and be convicted with any offence during the said three (3) years, the non-custodial sentence herein meted shall be revoked and the accused shall be committed to a custodial sentence for a further three (3) years from the date of the conviction.

20. Orders accordingly.

**DATED AND SIGNED IN KERUGOYA THIS 2<sup>ND</sup> DAY OF MAY, 2023**

.....

**R. MWONGO**

**JUDGE**

Delivered In The Presence:

1.Mamba: for State

2.Accused: Present in open court.



3.Kimotho: for Accused

