



**Republic v Ng'ang'a & another (Criminal Case 12 of 2020)
[2023] KEHC 21804 (KLR) (20 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 21804 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE 12 OF 2020
GL NZIOKA, J
JUNE 20, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

MARY WAIRIMU NG'ANG'A 1ST ACCUSED

LYDIAH WANJIRU NG'ANG'A 2ND ACCUSED

JUDGMENT

1. On June 11, 2020, the accused herein were arraigned before the court jointly charged with the offence of murder contrary to; section 203 as read together with section 204 of the Penal Code (Cap 63) Laws of Kenya. The particulars of the charge are that, on the 30th day of May 2020, at Kinugi area in Naivasha sub-county within Nakuru County they murdered Peter Njenga Nganga.
2. The information was read to them and they pleaded not guilty and the matter was set down for hearing. However, subsequently, the defence wrote to the prosecution requesting for plea bargain negotiation but the prosecution did not respond positively.
3. Be that as it were, the parties eventually engaged in plea bargain negotiation and subsequently on the 14th day of February 2022, they filed a plea bargain agreement.
4. Pursuant thereto the accused; Mary Wairimu Nganga was charged with the offence of manslaughter contrary to; section 202 as read with section 205 of the Penal Code, whereas the accused Lydia Wanjiru Nganga was charged with the offence of; accessory after the fact to murder contrary to; section 222 of the Penal Code.
5. In the meantime, the charges against Francis Nganga Karuga who had been jointly charged with the accused were terminated following the filing of a nolle prosequi dated; November 1, 2022.



6. The fresh charges were read to the accused who pleaded guilty thereto and a plea of guilty was recorded for each one of them. The facts of the case read that, the accused Mary Wairimu Ng'ang'a and Lydia Wanjiru Ng'ang'a are mother and sister to the deceased Peter Njenga Ng'ang'a. That they were living together with the deceased in the same house.
7. Further the deceased had a long history of drug addiction, consuming bhang and was always causing trouble in the home. That, on the material date; May 30, 2020, at 11.00am the deceased entered the kitchen, where the mother was preparing meals and was holding what appeared to be bhang. That he tried to light the bhang using the fire the mother had lit.
8. That, the action act incensed the mother leading to a confrontation whereby the deceased then threatened to kill her and wrestled with her and the mother picked a piece of firewood and struck the deceased repeatedly. The deceased fell on the ground and appeared unconscious.
9. That the mother called the deceased sister and requested her to assist carry the deceased to his room. The deceased's hands were tied to restrain him from attacking anyone once he regained consciousness. He was locked in his room as the mother and sister went about their daily chores. However, the deceased succumbed to the injuries as he never regained consciousness.
10. On noticing that the deceased had died the mother asked the sister to keep quiet about the incident for her to figure out what to do. When the deceased father returned home and inquired about him he was informed that the deceased had been rowdy and that he had been beaten and room tied up in his room. The father tried to peep through the door but could not see the deceased. He proceeded to bed.
11. On the following morning the deceased's father, grew suspicious of the events and called a neighbour wherein they broke down the door and discovered the deceased was no more. The father notified "Nyumba Kumi" personnel who notified the Police and the deceased body was moved to the mortuary.
12. The post-mortem was conducted and the cause of death established to be severe head injury due to multiple blunt force trauma keeping with homicide and forced submission evident by trying of hands. The post mortem report form was produced as prosecution exhibit (1). The three accused persons were thereafter arrested and charged before court. The accused confirmed the facts were correct in total and were convicted on their own plea of guilty.
13. The prosecution treated the accused as first offenders and the learned counsel Mr Wairegi filed mitigation submissions reiterating that, each accused is a first offender and voluntarily entered into a plea bargain agreement, pleading guilty to the lesser charge of manslaughter thus saving court's precious judicial time.
14. That the 1st accused, the deceased's mother committed the offence in self-defence against her son who had a history of drug abuse and violence. That she regrets her action, is remorseful and willing to enrol in anger management classes to help her be a better person. Further, she is a mother of six (6) children and fourteen (14) grandchildren some of whom are under her care. Furthermore, her family has forgiven her and is willing to accept her back.
15. That the 2nd accused is aged 27 years and a mother of a four (4) year old child. That she is remorseful, regrets her action and is capable of reform and therefore a suitable candidate for non-custodial sentence. Furthermore, the accused persons were granted bond and they abided by the conditions set throughout the trial.
16. The defence counsel relied on the case of; *Francis Karioko Muruatetu & Another vs Republic* [2017] eKLR where the Supreme Court stated that during mitigation the court may consider an aspect that is unclear during trial calling for pity than to impose the death sentence.



17. Be that as it may, in meting out the sentence herein, I have considered the fact that the accused pleaded guilty and saved the court's time, are first offender, mitigation and the pre-sentence reports.
18. The afore reports indicate that the 1st accused is 62 years' old and the mother of six children; three of whom are from her first marriage; while the other three including the deceased are from her second marriage with one; Franics Ng'ang'a Karuga. That she is an orphan her parents having passed away when she was young. That, she was brought up by her maternal aunt and did not attend school as she started domestic work in her early years.
19. That she is remorseful of the offence as she loves all her children and did not intend to kill the deceased. That after her release on bond she relocated from Kinungi to Kikopey in Gilgil where she lives on family land as it pains her to see the grave of the deceased.
20. Further her family confirmed witnessing the deceased acts of violence and threats to kill and pleaded for a non-custodial sentence stating that the incident was unfortunate and that the 1st accused did not intend to kill the deceased.
21. In regard to the 2nd accused person, the report indicates that she is the 5th born out of six (6) siblings and that the deceased was her brother. That she completed her secondary education and engages in domestic work. Further she got married but separated from her husband and moved back to her family's land, with her one daughter aged four (4) years old and whom she is the sole breadwinner. That after her release on bond she relocated to Kayole, Naivasha where she rents a house and works as a hair dresser.
22. That she is regrets what happened and pleads for the court's leniency. Similarly, the family members term the incident as unfortunate and prays for a no- custodial sentence.
23. In addition, the local administration in both Kinungi and Kikopey indicated that the accused do not have previous records of misconduct, and there is no hostility towards them even after release on non-custodial sentence as they continue to exist peacefully with the community. Further, the Area Chief and Nyumba Kumi member from Kinungi confirmed that the deceased used to use illegal drugs and would become violent
24. The report by the he Probation officer, Ms Njeri E Kahumba recommends a non-custodial sentence preferably probationary service.
25. In addition to the aforesaid the relevant legal principle and/or the principles underpinning the sentencing process as stated under clause 3 of the Sentencing Policy Guidelines are considered and states: -
 1. Proportionality: The sentence meted out must be proportionate to the offending behaviour. The punishment must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behavior is weighted in view of the actual, foreseeable and intended impact of the offence as well as the responsibility of the offender.
 2. Equality/Uniformity/Parity/Consistency/Impartiality: Same sentences should be imposed for same offences committed by offenders in similar circumstances.
 3. Accountability/Transparency: The reasons and considerations leading to the sentence should be clearly set out and in accordance to the law and the sentencing principles laid out in these guidelines.



4. Inclusiveness: Both the offender and the victim should participate in and inform the sentencing process.
5. Respect for Human Rights and Fundamental Freedoms: The sentences imposed must promote and not undermine human rights and fundamental freedoms. In particular, the sentencing process must uphold the dignity of both the offender and the victim.
6. International and regional standards on sentencing: Domestic law sets out the precise sentences to be imposed for each offence that courts must adhere to. In addition, international legal instruments, which have the force of law under Article 2 (6) of the *Constitution* of Kenya, should be applied. Reference should also be made to recognized international and regional standards and principles on sentencing, which though not binding, provide important guidance during sentencing. Relevant international and regional legal instruments and guidelines include but are not limited to the instruments listed under this sub clause.

26. In the same vein, I have considered the objectives of sentencing as stated under clause 4.1 of the *Sentencing Policy Guidelines*, as follows:

- a. Retribution: To punish the offender for his/her criminal conduct in a just manner.
- b. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
- c. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
- d. 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.
- e. Community protection: To protect the community by incapacitating the offender.
- f. Denunciation: To communicate the community's condemnation of the criminal conduct. 4.2 These objectives are not mutually exclusive, although there are instances in which they may be in conflict with each other. As much as possible, sentences imposed should be geared towards meeting the above objectives in totality.

27. Having considered the aforesaid, I note the sentence provided for under the law for the respective charges. Section 205 of the *Penal Code* provides as follows: -

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



28. Further section 222 of the *Penal Code* states as follows: -

“Any person who becomes an accessory after the fact to murder is guilty of a felony and is liable to imprisonment for life.”

29. In conclusion, I find that each accused is suitable for a non-custodial sentence taking into account the circumstances of the case under which the offence was committed and the relationship between the parties. Each accused is sentenced to serve three (3) years on probation. The probation department to ensure quarterly reports are filed in the first year and half yearly for the subsequent years and set programme in place for compliance

30. It is ordered.

DATED, DELIVERED AND SIGNED ON THIS 20TH DAY OF JUNE 2023

GRACE L. NZIOKA

JUDGE

In the presence of

Mr Atika for the State

Mr Wairegi for the accused

Both accused present in court

Ms Ogutu: Court Assistant

