



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Nyamu (Criminal Case E010 of 2021)  
[2023] KEHC 20789 (KLR) (24 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20789 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL CASE E010 OF 2021  
RM MWONGO, J  
JULY 24, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**BANCY MUTHONI NYAMU ..... ACCUSED**

**JUDGMENT**

1. The Accused was charged with Murder in that on 27<sup>th</sup> February, 2021 at Nyaikungu Sub-locaton in Mwea West Sub- County within Kirinyaga County she murdered Stanley Muthii Mutugi.
2. On 15<sup>th</sup> March, 2021 the accused was arraigned in court and plea was deferred. On 31<sup>st</sup> March, 2021 she pleaded not guilty to the offence. On 19<sup>th</sup> December, 2022 the defence proposed a plea bargain agreement. The matter was given a date for Plea Bargain Agreement settlement on 6<sup>th</sup> March, 2023 to give the parties time to consider the proposal.
3. On 30<sup>th</sup> May, 2023, the parties availed the signed Plea Agreement dated 6<sup>th</sup> February, 2023 was adopted by the court pursuant to Section 137A (i) and 137B of the *Criminal Procedure Code*.
4. The court being satisfied, pursuant to Section 137G of the *Criminal Procedure Code* that the accused had understood the contents of the Agreement, and that she had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion, adopted the Plea Bargain Agreement
5. The brief facts of the case are that on 27<sup>th</sup> February, 2021, at 7pm at Nyaikungu location, the accused was in the house of the deceased, her boyfriend, making supper using a kitchen knife when the deceased arrived. She asked him why he was barefooted making him angry and he started to assault her. After a while, the deceased moved outside the house and the accused followed with a knife. She stabbed him on the chest. The deceased's brother who had responded to the commotion went to report the incident at Nguka Police Post and handed the accused to the police.



6. The post mortem report dated 11<sup>th</sup> March, 2021 indicated the cause of death was due to hemorrhagic shock secondary to penetrating chest injury with sharp object approximately 4 cm width and 15 cm long.
7. Upon adoption of the PBA, the court thereby convicted the accused for manslaughter. The matter proceeded for mitigation.
8. In mitigation, the defence counsel submitted that the accused was a first offender; that she did not stab the deceased intentionally and regrets her action; that she is 27 years of age and has a child of 7 years that requires parental support; that she has been undertaking formal education and is presently in form 2; that she has been in custody since 2021 as she could not raise bail/bond terms; that she prays for a non-custodial sentence of three years where she will report to the probation officer.
9. The prosecution submitted that the accused was not a wife of the deceased and had a child with another man. The deceased had a child who will grow without the love of her father. He prayed for a custodial sentence of 5 years so that she can manage her anger. The plea agreement recommended for a non-custodial sentence of 3 years.
10. The only issues to be decided are whether the PBA having been adopted, the sentence ought to be a probation sentence
11. The Probation Report indicates that the accused is 27 years of age and has nine adult siblings all engaged in casual labour. She dropped out of school after class eight due to poverty. She stayed with her mother and gave birth to a child in 2017. The child is currently in class PP1 and the custody of her mother as the child's father refused to take responsibility. The accused met the deceased in 2020 and they started living together at his home in Kiuria village in Mwea. The deceased was a carpenter. She was with him until her arrest and incarceration.
12. Further, the report indicates that the accused is not viewed as a threat to the community and is not likely to be harmed by members of the public should she be released. She has a supportive family that is willing to assist her reintegrate to the community. The victim's father is still grieving and holds bitter feelings towards the accused and they are seeking for some form of monetary compensation from the accused's family. The state is opposed to the accused being released on a non-custodial sentence.
13. The Probation Report recommends that the accused be sentenced to a non-custodial sentence to enable her continue with formal education. During that time she would be accorded guidance and counselling to live uprightly again.
14. The sentence for the offence of manslaughter is found under the provisions of Section 205 of the [Penal Code](#) which reads as follows:

“ Any person who commits the felony of manslaughter is liable to imprisonment for life”
15. This court has taken into consideration the aggravating circumstances in that the accused used a deadly weapon namely a kitchen knife in committing the offence. The facts reveal that the killing was not premeditated; there was a single knife stab to the chest of the deceased.
16. The Supreme Court decision in the case of [Francis Karioko Muruatetu & Another v Republic](#) [2017] eKLR has given guidance on the mitigating circumstances to be considered before sentencing 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.
17. Taking into consideration the above sentencing guidelines, and the proposal in the Probation Report recommending a non-custodial sentence, and the time spent in remand the accused satisfies the criteria for a reduced sentence from the maximum life imprisonment.
18. Accordingly, I sentence the accused to 4 years imprisonment with effect from today's date with the last three (3) years being a non-custodial sentence, during which time the accused shall:
- a. Attend a counselling programme designed by the Probation officer to enable her to manage her anger, stabilize, and resume her care-giving role as a young mother
  - b. A record shall be kept of her attendance at the counselling
  - c. During the three-year period she shall maintain peace; and should she fall afoul of the law and again be convicted of any offence, the probation shall forthwith cease and she shall complete the remaining term of her sentence in prison.
19. Orders accordingly.

**DATED AT KERUGOYA THIS 24<sup>TH</sup> DAY OF JULY 2023**

.....  
**RICHARD MWONGO**  
**JUDGE**

**Delivered in the presence of:**

- 1. State Counsel - Mwamba
- 2. Asimwe - for Accused
- 3. Accused - Present in court

