



Stae v Muchiri (Criminal Case 10 of 2018) [2023] KEHC 20138 (KLR) (11 July 2023) (Sentence)

Neutral citation: [2023] KEHC 20138 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE 10 OF 2018
CW GITHUA, J
JULY 11, 2023

BETWEEN

STATE REPUBLIC

AND

JOHN IHORU MUCHIRI ACCUSED

SENTENCE

1. The accused, John Ihoru Muchiri was initially charged with the offence of murder contrary to section 202 as read with section 204 of the *Penal Code* but he was subsequently convicted on his own plea of guilty of the lesser offence of manslaughter under a plea bargain agreement recorded on April 25, 2023.
2. The particulars of the offence of manslaughter were that on March 17, 2018, at Kabuta village in Murang'a East Sub county, the accused unlawfully caused the death of Peter Muturi Muchiri.
3. The facts of the case are that on the night of March 17, 2018, the accused went home drunk shouting and creating disturbances. The deceased, his elder brother warned him to stop shouting and an argument ensued. When his brother dared him to a fight, the accused brutally cut him with a panga on his forehead. He was rushed to hospital but he died on the same night while undergoing treatment.
4. The post mortem report shows that the deceased succumbed to a head injury secondary to sharp object trauma. The report was produced in evidence as P.Exhibit 2.
5. Learned counsel for the accused Mr Mwaniki made a plea in mitigation on behalf of the accused. He pleaded for mercy from this court stating that the accused regretted his action and was remorseful; that before his arrest, he was taking care of his elderly mother who was sick; that he has since reconciled with his family who had forgiven him.
6. The court, upon hearing the above mitigation, ordered for filing of a presentence report to guide it in determining the appropriate sentence for the accused in this case. The report was compiled and filed by



Ms Alice Waithera , a probation officer in Murang'a county. The report captured views if the victims family, the local administration and the community at large.

7. According to the report, the accused is 24 years old. He is the last born in a family of eight and prior to his arrest, he was a casual worker. He is single. It is said that the accused was known to be a peaceful man but his major problem was alcoholism which contributed to the commission of the offence. His mother and siblings upon being interviewed requested that the accused be sentenced to a non-custodial sentence so that they did not loose another member of their family through imprisonment. The local administration and community at large confirmed that the accused was not a threat to the community.

8. I have considered the circumstances in which the offence was committed and the relationship between the accused and the deceased.

I have also considered the age of the accused and the fact that he is a first offender. I have also taken into account his plea in mitigation and the objectives of sentencing as set out in the Judiciary's Sentencing Policy Guidelines which includes retribution, rehabilitation, restorative justice, community protection and denunciation.

9. I must point out that life is sacrosanct and no person has a right to intentionally take away the life of another unless authorised by the Constitution or any other written law - See article 26(3) of the Constitution of Kenya 2010. It is evident in this case that the accused was drunk when he assaulted his brother occasioning him fatal injuries. He is remorseful and wishes to be given a chance to rebuild his life. It is noteworthy that he has been in lawful custody for slightly over five years given that he was arraigned in court on March 29, 2018 and has been in remand custody since then.

10. Taking into account all relevant factors particularly the accused's young age , the fact that he is a first offender as well as the views expressed by the victim's family who are also his family members and the circumstances in which the offence was committed, I am of the considered view that a non- custodial sentence that would facilitate rehabilitation and reintegration of the accused into his community is the most appropriate as it would best serve the interest of justice in this case. This is not to say that I do not appreciate the gravity of the offence of manslaughter but given the special circumstances in this case, I am convinced that a custodial sentence will not serve any of the objectives of sentencing and is unsuitable as a sentencing option in this case.

11. Guided by the foregoing, I hereby exercise my discretion and sentence the accused to serve three years on probation during which time he shall undergo guidance and counselling.

12. It is so ordered. File now closed.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 11TH DAY OF JULY 2023.

C. W GITHUA

JUDGE

In the Presence of:

The Accused

Ms. Muriu Prosecution Counsel

Mr. Quinteen Court Assistant

No Appearance by Mr. Mwaniki for the Accused.

