



**Republic v Gitau (Criminal Case 001 of 2021)
[2023] KEHC 21425 (KLR) (1 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21425 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL CASE 001 OF 2021
CM KARIUKI, J
AUGUST 1, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

ROBERT NJOROGE GITAU ACCUSED

RULING

1. The Accused was charged with murder. He was convicted of a lesser offence of manslaughter after a plea bargain, and the matter is for sentencing.
2. The facts admitted by the accused vide the Plea Agreement signed by the parties are:

On the 8th January 2021, at around 10.00 am, the accused left home with the deceased, her girlfriend, to enjoy some drinks in a nearby Honey Pot pub at Kandatura Trading Centre, about 300 metres away from their home. They drank until the following day, on the morning of 9th January 2021, when they finished the cash they had, and the accused went back home, left the deceased behind, and came back with a crow bar, which he sold to a customer at the same pub for Kshs. 700. At around 4.30 a.m., he realized that the deceased was not at the table where they were seated. He then went out to look for her and found three men, one identified as Mburu pulling the deceased, and the other two ran away as Mburu was left behind.

The accused then asked Mburu what he was doing with the deceased, but Mburu hit him with a piece of stone on the head, which made the accused angry, and he rushed home and picked a panga he had hidden on the fence. Upon returning, he spotted Mburu having sex with the deceased, and Mburu ran away as he saw the accused approaching. The accused tried chasing him but could not catch him. He then returned, found the deceased half naked,



and started assaulting her with the panga, inflicting serious injuries. She was taken to J M Hospital, where she died the following day, on 10th January 2021.

A postmortem was later conducted on the deceased's body, and the Doctor opined that the deceased died due to cardiac arrest following severe trauma and blood loss following a miscarriage.

The accused was later arrested at his hideout in Lanet Nakuru County and charged with the offense of murder, which has now been reduced to manslaughter, to which offense he has now pleaded guilty.

3. The Prosecution informed the court there are no previous accused records. However, the information in PBR indicates that the accused had a previous conviction but for a different offense. The Prosecution proposed a ten (10) years sentence, considering the custodial period the accused has been experiencing.
4. However, the defense mitigation is that the accused is a first offender and has been in custody for about 2 ½ years.
5. The facts narrated in court constituting the circumstances of the offense disclose that the victim's lover attacked the accused. Then the lover continued having sex with the victim, the accused girlfriend. This provoked the accused to the brim. Thus, he attempted to attack Mburu to vent his wrath on the attacker who had hit him with a stone, but because he fled and the accused could not catch up, he vented his anger on the victim, his girlfriend inflicting fatal injuries with a panga.
6. On that background, the defense seeks the court to award the accused four (4) years less the span he has been in custody (2 ½ years).

Determination

7. Sentencing aims for deterrence, rehabilitation, and retribution. The accused had time to lower or cool off when he fetched a panga to sort out Mburu.
8. The accused had even chased attacker Mburu for a distance before he could return and vent his anger upon his girlfriend herein.
9. The extent of the accused's injury inflicted by a stone attack by Mburu has not been proved by document or otherwise. The period between an attack by Mburu, fetching panga chasing Mburu (attacker), and return to the scene where Mburu had a sex act with the accused girlfriend is not established. It is not undisputed that the accused had some time to cool his passions before attacking the victim. He seems to have substituted the target of anger, from Mburu to the victim. The live sexual act he beheld between the victim (girlfriend) and Mburu, the attacker, could have struck him to the core and aggravated the emotions above the pain of the attack he had been subjected to. The court has discerned the entire circumstances of the incident as captured above and the facts stated herein.
10. The PBR report dated 25/2/2021 showed that the accused had a case of handling stolen goods pending by the time of arrest but no record of its result; thus, the court treats him as a first offender.
11. In sum, the court finds that given the instant case's circumstance, the court finds that accused deserved a custodial sentence taking to account the period he has been in custody and the fact that he is a first offender and has admitted the offense, saving court time. I agree with the prosecution that he ought to have served ten (10) years or thereabout, but given the custodial period he has been in prison and the circumstances of this case, I make the following orders
 - i. I sentence him to seven (7) years from the date of this ruling 1st August 2023.



DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 1ST DAY OF AUGUST 2023.

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CHARLES KARIUKI

JUDGE

