



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Nganga (Criminal Case 2 of 2019)
[2024] KEHC 12728 (KLR) (23 October 2024) (Sentence)**

Neutral citation: [2024] KEHC 12728 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 2 OF 2019
RM MWONGO, J
OCTOBER 23, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

KELVIN NYAMAU NGANGA ACCUSED

SENTENCE

Background

1. The accused person was charged with murder contrary to Section 203 as read with 204 of the [Penal Code](#). The particulars of the offence are that on the 16th of January, 2019 at Kirogo village, Tebere location within Kirinyaga County, unlawfully murdered Purity Wawira.
2. After hearing seven prosecution witnesses and the accused, the court on 30th April, 2024 convicted him with the offence of manslaughter.
3. On 31st July, 2024 the matter proceeded for mitigation hearing. The court found that the accused had caused the death of the deceased, but there was no evidence of malice afterthought.

Brief facts

4. PW3 (Joseph Maina Mwaniki) testified that he was at a bar christened Village Joint Pub on the 16th January, 2019 at about 22:45 hours. He was joined by PW-5 Paul Mbugua, PW-6 Karanja Ndirangu and the accused Kelvin Nyamau. The accused was taking a popular drink known as Keg that would mostly cost Kshs 30/= a cup and he had also had ordered a stick of cigarette that costs Kshs 10/= all in total he had a bill of 40/=. The barmaid (Deceased Purity Wawira) requested the accused to settle the bill but he ignored her and walked out instead.
5. When the accused left the bar, the barmaid followed him. PW3 was near the door. The accused stopped the deceased with a leg kick. She fell down and became unconscious. She was carried into a vehicle



by the owner of the bar and taken to Kimbimbi Sub-County Hospital. She was pronounced dead on arrival.

6. PW-4 Dr. Karomo who performed the Post Mortem on 22nd January, 2019 formed the opinion that the cause of death was massive internal bleeding following an assault with a blunt object.

Mitigation

7. Counsel for the accused rendered mitigation as follows: That the accused is 28 years old. He is remorseful for the offence. He has not yet started a family of his own and has a full life ahead of him.
8. The accused has been in custody since 17th January, 2019 and the sentence should factor the time spent. He has undergone rehabilitation programs while in prison and has received certificates which include: The Prisoner's Journey program and Prison Project. The victim's family had requested for the accused to be contained in custody to permit total reform. The accused has been in custody for 6 years and has reformed.
9. The Defence urges that a non-custodial sentence be meted.
10. The prosecution submits that the accused is not a 1st offender. The offence was committed while he was on bail, and has been abusive and disrespectful. They seek for a maximum custodial sentence.
11. The Probation Officer's Pre-Sentence Report dated 2nd April, 2024 is unfavorable. The victim's family are still bitter with the accused and request the court to pass a custodial sentence. The community finds him as a threat to their safety and as such they would prefer a custodial sentence for deterrence.
12. The question for determination is what is the appropriate sentence for the accused.

Analysis and Determination

13. The accused having been convicted of Manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*, there is only one sentence provided under Section 205 of the *Penal Code*. The provision reads:

“205. Any person convicted of manslaughter is liable to imprisonment for life.”
14. I have taken into account the circumstances of the offence are that the accused person assaulted the deceased person with a blunt object causing internal bleeding that resulted in death. I have also taken into account the mitigation of the accused that the accused is 28 years old; is remorseful for the offence; has not yet started a family of his own and has full life ahead of him.
15. I have also noted that the accused has undergone rehabilitation programs while in prison and has received certificates which include: The Prisoner's Journey program and Prison Project, and that he seeks a non-custodial sentence since the accused has been in remand for 6 years.
16. I note the prosecutions representation that no the accused is not a 1st offender in that he committed an offence. The accused is abusive and disrespectful. The prosecution seeks a maximum custodial sentence.
17. The Probation Officer's Pre-Sentence Report dated 2nd April, 2024 is unfavourable. I note from it that the victim's family are still bitter with the accused and request the court to pass a custodial sentence.



In the following case of *Manyeso v Republic* (Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023) (Judgment) the Court of Appeal held that life imprisonment was unconstitutional. The court stated:

“We are of the view that having found the sentence of life imprisonment to be unconstitutional, we have the discretion to interfere with the said sentence. We note in this respect that the appellant did raise the concern of his sentence of life imprisonment while he was 18 years of age in his first appeal... We, therefore in the circumstances, uphold the appellant’s conviction of defilement, but partially allow his appeal on sentence. We accordingly set aside the sentence of life imprisonment imposed on the appellant and substitute therefor a sentence of 40 years in prison to run from the date of his conviction.”

18. Further from the wording of Section 205 *Penal Code*, the court has discretion in determining the nature of the sentence to impose. This is the position indicated in *Republic v Winnie Adbiambo* [2016] eKLR where the accused was sentenced to 9 years’ imprisonment after conviction of manslaughter, Lesit J held:

“I have also considered Section 205 of the *Penal Code* which shows clearly that a person convicted for the offence of manslaughter is liable to imprisonment for life. That means the court can exercise discretion in determining the nature and term of the sentence to impose against the accused person.

19. Accordingly, the life sentence is not an option open to this court.

20. Under the *Judiciary sentencing Policy guidelines*, the objectives of sentencing are as follows:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.
4. 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.
5. Community Protection: to protect the community by incapacitating the offender.
6. Denunciation: To communicate the community’s condemnation of the criminal conduct.

21. In *Republic v Mwangi* (Criminal Case E088 of 2023) [2024] KEHC 367 (KLR) (25 January 2024) (Sentence) it was held that:

“The court has to balance between the need to have the accused atone for her actions and the need to exercise leniency, given the circumstances of the case. In this regard I think that the sentenced proposed by the State is appropriate and within the range of sentences meted out in similar cases.

Having considered all the circumstances of the case I hereby sentence the accused to nine (9) years imprisonment.”



22. The proviso to section 333(2) of the *Criminal Procedure Code* obligates the court to take into account the time already served in custody if the convicted person has been in custody during the trial. Failure to do so impacts the sentence and may result in an excessive punishment that is not proportional to the offence committed. The court must take into account the period for which the offender was held in custody during the trial

Disposition

23. Taking all the foregoing matters into account I hereby deem the appropriate sentence for conviction of manslaughter in this case is to be a custodial sentence. Accordingly, I sentence the accused to ten (10) years' imprisonment commencing 1st February 2019.

24. Orders accordingly.

DATED AT KERUGOYA THIS 23RD DAY OF OCTOBER, 2024

R. MWONGO

JUDGE

Delivered in the presence of:-

Mamba for State Counsel

Waweru for Accused

Accused present in court

Murage, Court Assistant

