



**Republic v Kibea alias Kevo (Criminal Case 89 of 2018)
[2024] KEHC 12577 (KLR) (17 October 2024) (Sentence)**

Neutral citation: [2024] KEHC 12577 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 89 OF 2018
EM MURIITHI, J
OCTOBER 17, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

GODFREY MUTETHIA KIBEA ALIAS KEVOO ACCUSED

SENTENCE

Introduction

1. The Accused was convicted of his own plea of guilty for manslaughter contrary to sections 202s read with 205 of the Penal Code, following a plea bargain agreement dated 2/11/2023.
2. The facts of the case admitted by the Accused in the Plea Bargain Agreement, PEx No. 1, are as set out therein as follows:

“8. Had the case gone to trial, the Prosecution would have presented evidence sufficient to prove the following facts beyond a reasonable doubt:

It was on the 15th day of March 2018 at around 1000 hrs when Pwl Victor Muriira was at his shop where he used to sell miraa within Mwonkene shopping center when he was visited by his friend Kevin (accused herein) who was in the company of a lady. That they both entered his house and started having drinks.

That the two lit "shash" (bhang prepared ready to smoke) and smoked for a while before the said female companion got high. He stated that Kevin requested him to have her lay in his bed to sober up which he agreed and left them inside his house at around 1300hrs and headed to Kiirua.



Pw 1 stated that he returned at around 1500hrs and found Kevin standing outside his house and when he made a query about his lady friend he indicated that she was still sleeping and that he had tried to wake her up and she was not responding.

That pwl entered his house and found the deceased laying on his bed but noted her right eye was bleeding and underneath her face was a white piece of sheet onto which the blood was flowing to.

That Kevin asked him to go get a motor vehicle to ferry her to hospital and they left together and got a green sienta within Kiirua market. That they went back together with the driver and his conductor but when they got to his house and saw the deceased they refused to help stating that she was already dead.

He further stated that Kevin left and came back with a padlock and locked the house. That they both headed back to Kiirua market to get a motorcycle but did not get one and decided to go back to Kevins house where he too the deceased dress and some of her other items and went back to PWI 's house.

The removed her blue jeans trouser which belonged to Kevin and put on her the flowery dress.

That at around 2300hrs the both removed the body from PWI 'S house and took it at the roadside which was around 100meters from pv Is house. That she also wore blue sandak shoes. They then went back to pwls house and Kevin cleaned it up and took the clothes that she previously wore and put it in a sack before throwing them into a pit latrine.

That Kevin then left for his house and owing to fear pwl fled from his house and went to his rural home at Mboroga and came back the following day which was a Sunday and found people gathered around the body of the deceased and she revealed what had transpired to a lady by the name 'mama Makena' who went ahead to inform officers from Kiirua police station. This led to the arrest of pwl who was later on released upon the arrest of Kevin, the accused herein. PWI's statement was further collaborated by Pw2,3,4 and 5.

Pw2, Derrick Mwititi stated that he knew pwl and on the material day had gone to charge his phone at PWI, s house and found him in the company of two people. He was very categorical that there was already dressed in blue jeans trousers and wore blue shoes and that she lay on the bed panting heavily and next to her on the bed was a man that he did not recognize. He gave out his phone to Pwl and left till around 1600hrs when he came back and found the door locked from outside and there was no response.

That he back again at around 2000hrs but still did not find anyone. That he back went the next day and saw a crowd of people on the roadside and recognized the deceased as the lady that was sleeping on Pw1s bed.

Pw3, Purity Gatwiri, stated that on the 14thday of September 2018 he had seen her neighbor the accused person come in the company of a lady dressed in a green flowery dress and that they came in through the fence since the gate was closed. That they left the house the following day at around 1100hrs with lady dressed in blue jeans and that they greeted her and he told her she was



his girlfriend. That on the 16th of September 2018 she saw the body of the deceased on the roadside dressed up in the same flowery.

Pw4, Esther Gatwiri stated that on the 13th day of September, she met with the deceased at Gakoromone market where she had bought shoes for her daughter but she declined to escort pw4 to church since she was in the company of her new boy friend whom she stated was called Kevin and they left together and never heard of her till when she was found dead.

Pw5, Ziporah Muthau ,deceased aunt confirms that the deceased had on the 14thday of September gone to exchange shoes she had bought for her daughter at Gakoromone market and never came back home till her body was discovered. That she identified those shoes as the ones collected from the accused house.

Pw6, PC Elinah Ongubo, DCI Buuri stated that he received instructions to investigate the matter on the 20th of September from the DCIO Buri and took over the matter from OCS Kiirua police station who was in previous conduct of the matter. That Pw1 was handed over to him and it was through him and with the help of Pw7, Abedinego Munene (accused landlord) that they visited the scene and retrieved a white sack from a pit latrine which had clothes belonging to the accused which had been worn by the deceased. That after recording several witness statements he formed the opinion of charging the accused herein and Pw1 was released and recorded his statement.

The deceased body was removed to Meru level 5 hospital on the 16th of September 2018 where a post mortem was conducted by pw7, Doctor Mwangi on the 4th of October 2018. It was concluded that the cause of death was severe head injury and comminuted skull fracture.

It is in the light of the above that the accused pleads to the lesser charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code as they were both fighting and were too intoxicated by the bhang they had taken.”

3. The Probation Officer’s report dated 9/9/2024 recommended non-custodial sentence as follows:

“Summary

Your Lordship; before this court is a 34 year old man who is single and having no children whosoever.

His father died in 2020 and his still mourning the death of his mother who died in the year 2023.

The offender and the victim were not relatives and they did not know one another prior to this episode. The victims forgive the offender and two side are planning to hold a cleansing ceremony to avoid being haunted by the blood lost and the death of the victim. The clan leadership is also ready to refund to the secondary, victims the cost incurred in their traveling to court during the case hearings.

The local administration and the community members interviewed were very positive about the offender and were not opposed to the offender being committed to serve a non-custodial sentence. Therefore, there are no fears of revenge or any retaliation.



Recommendation

Considering the above findings, I am of the opinion that the offender is suitable for a non-custodial sentence. A probation sentence is hereby recommended subject to court's final determination.

Jackson Kinyua

Probation Officer

Meru

9/9/2024.”

Mitigation

4. In mitigation, Counsel for the Accused Mr. Omari urged the court to adopt the Probation Officer's report as follows:

“Mr. Omari in mitigation

Accused is remorseful. He is 34 years old. He is an orphan. He lost his parents. He has a child but he is not married. He is the one who is taking care of the child as the mother died. We pray for a non-custodial sentence taking into consideration the circumstances in which the incident occurred. We pray for leniency on behalf of the accused.”

5. For the DPP, Mr Masila, Senior Prosecution Counsel, conceded the request for noncustodial sentence observing that the accused had been in custody for 6 years since 8/10/2018, as follows:

“Mr. Masila for DPP

I have read the Pre-sentence report dated 9/9/2024 whereby it is positive for non-custodial sentence.

The sentiments of the victim's family have been considered in that they have forgiven the offender as they do not know how the victim met his death. The community are also not opposed to a lenient sentence for offender.

Accused has been in custody since 2018 (8/10/2018) about 6 years.

The circumstances of the offence is when they were in a drinking spree with the deceased which led them to smoking cannabis sativa and a fight occurred which resulted to accused killing the deceased. Drunkenness and they drinking should not have led to the death of the deceased.

Both family of accused and victim's family are positive in terms of reconciliation effort and holding a cleansing ceremony as set in Pre-Sentence Report and is light of the fact that accused has been in remand close to 6 years.

I do not oppose a non-custodial sentence in this matter.”



Appropriate sentence

6. The court has considered the positive report of the Probation Officer recommending Probation sentence, especially the circumstances of the offence and offender's attitude towards the offence set as follows:

“Circumstance of the offence

According to the report obtained during the interview, the offender was in Meru town and taking beer in drinking joints. While there he collected a whore and they went to his room in Kiborione in Buuri Sub County. When they were there they engaged in a drinking spree as before and also smoking bhang with other friends. In the wee hours of the morning the lady attempted to take a French leave and the accused denied her the same. That is when a fight erupted resulting to the accused killing the victim unplanned.

Offender's attitude towards the offence

He is remorseful of the offence and regrets for his actions. However, he attributed the death of the victim to the injuries inflicted on her due to alcohol, bhang influences and urge to have sexual satisfaction, He pleaded to this honourable court to consider giving him a non-custodial sentence.”

7. The Court has also considered the mitigating circumstances that the accused had been drunk and high on cannabis sativa at the time of the offence and the likelihood of forgiveness by victim's family and cleansing ceremony to be performed as indicated in the Probation Officer's report.
8. However, the court finds that the aggravating circumstances tilt the balance in considering whether to pass a non-custodial sentence. The evidence shows the heinous nature of the offence where deceased had her eye savagely punctured amid a violent sexual assault as shown in the Post Mortem Examination Report dated 4/10/2018 presented as PEx No. 2, indicating cause of death as severe head injury secondary to comminuted skull fracture and the deceased's external injuries as follows:

“-Occipital and Parietal regions of skull with comminuted fracture and scalp stained with blood.

-RHS eye-ball punctured and deflated.

-Multiple lacerations and scratches to arm over 20 approximately 1-2 cm

-Bruising and scratches on anterior elbow approximately 5x4 cm.

-Bruising and lacerations and scratches on posterior shoulder in scapular region over 4 6-8cm in Length.

-Back (lower) and in region of anal orifice diffuse bruising and scratch marks.

-Scratches at shoulder joint, multiple 6x5cm in length.

-mixture of blood and feaces at anal orifice, gaping.

-vaginal orifice gaping.

Multiple scratches posterior neck and laterally approximately 1-2cm.”

9. This episode of sexual and gender based violence must be condemned by an appropriate deterrent sentence.



10. It is clear that the killing occurred in a compound criminal enterprise involving rape, unnatural act, indecent assault and fatal assault/killing. The Court also notes the fact of the killing occurred in circumstances of alcohol and drug abuse which, though they may have driven the accused to commit the crimes, were self-inflicted and no defence of intoxication under section 13 of the Penal Code avails the accused. This court considers that a deterrent custodial sentence is appropriate in the circumstances of this case.
11. The Court considers as entice of imprisonment for nine (9) years to meet the justice of the case.
12. The court, however, takes into account the period of pre-trial detention, pursuant to section 333 (2) of the Criminal Procedure Code, that the accused has been in custody for six (6) years since 8/10/2018 when he was remanded to await his trial.

Orders

13. Accordingly, the Court having convicted the accused for manslaughter contrary to section 202 as read with 205 of the Penal Code the Court passes on the accused a sentence of imprisonment for nine (9) years.
14. The sentence of imprisonment for nine (9) years shall, pursuant to section 333 (2) Proviso of the Criminal Procedure Code commence on 8/10/2018, when the accused was first remanded to await his trial.
15. Consequently, as the accused will today have served in full his nine-year imprisonment sentence, with remission under section 46 of the *Prisons Act*, the Court directs that the accused be released from custody forthwith, unless he is otherwise lawfully held or unless the Commissioner of Prisons has for offences of prison discipline withheld remission on the accused.

Order accordingly.

DATED AND DELIVERED THIS 17TH DAY OF OCTOBER, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Omari for the Accused.

Mr. Masila for the DPP

