



**Republic v Muchenditsi alias Mosee (Criminal Case 27 of 2020)  
[2024] KEHC 12016 (KLR) (9 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12016 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE 27 OF 2020**

**AC BETT, J**

**OCTOBER 9, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ALLAN MASHETI MUCHENDITSI ALIAS MOSEE ..... ACCUSED**

**RULING**

1. The Accused Allan Masheti Muchenditsi Alias Mosee was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. After plea bargain, the charges were reduced to manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*; the particulars being that on the night of 25<sup>th</sup> day of June 2020 at Shikuyu village, Shimmba Location within Kakamega County, he unlawfully killed one Alex Onyango Alias Babu.
2. The brief facts are that on the fateful day, at 6.30 p.m., Alex Onyango, the deceased herein and Haron Khayumbi went to visit the Accused at his homestead where they did not find him. Haron Khayumbi left the deceased to wait for the Accused. The next day, while escorting his mother to work, Haron Khayumbi found the body of the deceased on the footpath. A search was conducted in the Accused's house and several items were found viz:- a manila bag, jiko, blue jean trousers and some maize cobs that were found hidden under the bed. A further search yielded a used condom with seminal fluid which was collected and sent for DNA profiling. A post mortem was later conducted. In the post mortem reported dated 2<sup>nd</sup> July 2020 which was produced by the State, the cause of death was stated to be asphyxia due to mud stuffing. There was minor bruising to the mical cleft above the anus. The deceased was 17 years old at the time he met his death. The DNA analysis report was that the seminal fluid in the used condom belonged to the Accused. However, the material outside the condom was insufficient to generate a profile.



3. The Accused pleaded guilty to the charge of manslaughter and admitted the facts as stated as true and correct. The court was satisfied that the Accused understood the plea agreement and acted voluntarily as stipulated by Section 137G of the *Criminal Procedure Code*.
4. In mitigation, the Accused through Ms. Olucheli submitted that he is remorseful and has mended his ways since his arrest. He submitted that he is still young and has learnt his lesson. He prays for a lenient sentence so that he can join other citizens in building the nation.
5. Ms. Chala for the prosecution submitted that the accused had saved the court's time by offering to plea bargain. However, he is still in denial and does not admit that he committed the offence as is evident from the Pre-sentence Report. According to her, the offence was heinous since the victim was sodomised and calls for a stiff sentence as a deterrence. She submitted that the Accused has not demonstrated any remorse.
6. Upon perusal of the Pre-sentence Report, the offender's attitude is stated to be one of denial. The report states as follows:-

“The offender still denies having murdered the victim. He says that he only entered into a plea bargain because he was advised by his advocate.”

7. In light of the Accused's statement, the court is obliged to interrogate the plea of guilty that was entered subsequent to the plea agreement.
8. Section 137K of the *Criminal Procedure Code* contemplates a situation where an Accused may withdraw a plea of guilty before the court passed sentence. It states as follows:-

“An accused person may withdraw a plea of guilty pursuant to a plea agreement—

- a. prior to acceptance of the plea by the court, for any reason; or
- b. after the court accepts and convicts on the plea, but before it passes a sentence, if the accused person can demonstrate, to the satisfaction of the court, a fair and just reason for requesting the withdrawal.”

No doubt, the statutes make allowance for withdrawal of the plea in view of the finality of a sentence passed pursuant to a plea bargain agreement. Moreover, Section 137 (L) (2) allows either party to apply for a conviction and sentence procured pursuant to a plea agreement to be set aside on the grounds of fraud or misrepresentation.

9. In light of the foregoing express provisions of the *Criminal Procedure Code*, it is the court's view that at any time before the passing of the sentence, where it appears that the Accused may not have voluntarily consented to the plea bargain, the court ought to reject the plea agreement.
10. In determining so, I am guided by the case of *John Muendo Musau v Republic* [2013] eKLR where the Court of Appeal held as follows:-

“We want to add here that if the Accused wishes to change his plea or in mitigation says anything that negates any of the ingredients of the offence he has already admitted and been convicted for, the court must enter a plea of not guilty. That is to say that, an accused person can change his plea at any time before sentence.”

11. The court therefore invokes the provisions of Section 137 (I) of the *Criminal Procedure Code* on the grounds that the Accused person's plea was equivocal in that at the point of the social inquiry, he



denied committing the offence and attributed his plea of guilty to the offence of manslaughter to his legal representative.

12. The upshot is that the court hereby rejects the Plea Agreement dated 16<sup>th</sup> May 2024. Pursuant to Section 137 J (c) of the [Criminal Procedure Code](#), I now enter a plea of not guilty for the Accused. I now remit this file to High Court 3 for trial.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 9<sup>TH</sup> DAY OF OCTOBER 2024.**

**A. C. BETT**

**JUDGE**

In the presence of:

Ms. Chala for the Prosecution

Ms. Olucheli for the Accused

Court Assistant: Polycap

