



**Republic v Kebwaro (Criminal Case E041 of 2022)
[2024] KEHC 14771 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14771 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E041 OF 2022
PN GICHOHI, J
NOVEMBER 14, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

EVANS MICHORI KEBWARO ACCUSED

RULING

1. Evans Michori Kebwaro (herein referred to as the accused) was among the five (5) accused persons charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. He later entered into a plea bargain agreement to the offence of accessory after the fact of murder contrary to section 222 of the Penal Code.
3. The particulars of the offence are that on the 24th day of June 2022 at Mawanga Workers area, at All Nations Kiamaina Ward within Nakuru North Sub- County Nakuru County jointly with others before court wilfully and unlawfully participated in concealment of the body after the murder of Diana Opicho.
4. The brief facts revolving around this murder and as presented by Mr. Kihara for Director of Public Prosecutions were that on the 24th day of June 2022, the deceased was employed by her relative to look after the house and also do house duties.
5. The owners of the house recall leaving the deceased alone in the house and went to Nakuru town for their days business and other personal activities. Then one Joshua Mahulel Mukoya returned at around 1.30 p.m. and entered the compound where he saw a suitcase outside the house but this did not bother him.
6. He proceeded to the main door but it was locked. He tried calling the deceased but there was no response. He proceeded to the rear door of the house and found it open. He entered the house and



- saw a black suitcase and the deceased's phone charging. He noticed that the television set was missing. Alarmed, he proceeded to the main door and opened it to confirm if the deceased had returned. He proceeded to the bedroom found everything in a mess.
7. He armed himself with a panga and a hammer and stepped out of the house where the red suitcase was. He saw the television outside the house. He returned the suitcase to the house.
 8. Suspecting that something was wrong and that someone was in the house, he remained vigilant and continued to look for the deceased. He combed the entire house. He went to the deceased's bedroom and found it in a mess. The deceased was partly covered. On checking her pulse, he noticed that she had passed away.
 9. While screaming, he left the house through the rear gate and neighbours responded. The matter was reported and the police came to the scene. The deceased's body was taken to PGH Nakuru for preservation and post-mortem.
 10. The police traced and arrested the accused person at Kisii after he inserted his sim card in a phone belonging to the deceased. Upon his arrest, the accused was interrogated and subsequently recorded a confession. He disclosed to the Investigating Officers who his accomplices were and proceeded to identify the five others. He also took the police where each resided and a thorough search was conducted.
 11. Upon gathering information, the accused proceeded to take the police officers to each murder scene. The accused informed the officers that before executing the crime on the 24th June, 2022, he and the other five met on the 23rd day of June, 2022 near Nakuru South Cemetery.
 12. Two of them planned the attack on the homestead and each of the accused persons was informed of the duty each had to perform at the Mawanga area, and in particular, the homestead where the deceased resided.
 13. They were advised that one person had to gain entry to confirm that the owners had left. One of the accused persons was ferried to the house around 3.00 a.m. by two co-accused persons and the rest met at around 9.00 a.m. at Nakuru South Cemetery. The accused was carried on a motorbike with two accused persons. The second motorbike carried two other accused persons making them five who arrived that morning.
 14. They arrived at the deceased house around 10 a.m. and one of the accused person's called the accused who had accessed the house at 3.00 a.m. to confirm the status of the homestead. After being given the green light, they gained access through the rear entrance of the house as the owners had left.
 15. In his confession, the accused informed the officers that they realized someone was in the sitting room. One of them entered the sitting room where the deceased was and dressed in white and black trousers. They tied a wire on her neck.
 16. They interrogated her asking what the owners did for a living. She informed them that they had a business in Nakuru town. They instructed her to show them the room for the owners of the house. She complied. The room was secured with a metal door.
 17. The accused was instructed to look for a bag so that they could pack the 32-inch TV set and woofer. Their leader instructed two others to gain access through the ceiling. However, upon gaining access to the room, they found nothing of value.
 18. Two of them proceeded to take the deceased to her room where they killed her. Upon killing of the deceased, they congregated in the room where the deceased was. Upon entering the room, the accused



- noticed that deceased's trousers were lowered to the ankle. The leader of the gang members requested each to relax and make love to the deceased.
19. When it was his turn, the accused found deceased facing upward with blood oozing out of her mouth and she had vomited. He therefore turned to face the floor. He made love to her from behind.
 20. One of the key suspects requested the accused and another to take the deceased's beddings and cover her. The accused subsequently proceeded to pack the TV set and went outside. He noticed a man come into the compound and he dropped the bag and returned to the house to inform the rest. They left through the kitchen and back gate.
 21. They returned where they had packed the two motor cycles and rode back to Nakuru South cemetery arriving there at around 2.00 p.m. One of them who is an accused before court, requested that they meet around 5.00 p.m. In that second meeting at the cemetery, they were informed by their group leader that their mission was a failure. They parted ways.
 22. On the 27th of June, 2022 the deceased body was subjected to a post-mortem and the doctor opined that the cause of death was asphyxia due to neck compression in keeping with homicide. The charge of murder preferred against the accused was reviewed to the charge of accessory after the fact of murder through this plea agreement.
 23. The accused person admitted this charge, particulars thereof and the facts as read to him upon which he was convicted on his own plea of guilty. At the request of parties, this Court ordered for a pre-sentence report and it was duly availed. Prosecution confirmed that the accused person has no previous records.
 24. In mitigation, Mr. Opondo for the accused person stated that although there were ongoing criminal cases before High Court being HCCR No. E039 of 2022, HCCR No. E040 of 2022 and HCCR No. E042 of 2022, the accused person has distinctively showed remorse.
 25. Counsel urged that though this offence was grievous, this Court considers the cooperation shown by the accused and that he is a first offender. He therefore urged that this Court does exercise its discretion and accord the accused a lenient sentence as he has a potential for rehabilitation.
 26. On his part, Mr. Kihara submitted that though the accused person had shown remorse, recorded a confession that resulted to the arrest of the other accused persons and that his cooperation has saved judicial time in this matter, the offence committed by the accused and his co accused in this matter was heinous where he assisted in concealment of the body of the deceased.
 27. Appreciating that the accused is a first offender and that he assisted towards prosecution of this matter, he urged that this Court considers how this murder was committed and the accused's blameworthiness in light of the role he played in this matter.
 28. Further and while supporting the Probation Officer's report, he urged that the Court be guided by the Judiciary Sentencing Policy and accord the accused person a suitable deterrent custodial sentence that will also communicate to the public that such offences should be condemned.

DETERMINATION

29. Regarding this offence, section 222 of the Penal Code provides that: -

“Any person who becomes an accessory after the fact to murder is guilty of a felony and is liable to imprisonment for life.”



30. In determining the appropriate sentence in this case, the Court has to have in mind the objectives of the sentence. Judiciary Sentencing Policy Guidelines set out those objectives. The sentence should be meant: -
1. To punish the offender for his/her criminal conduct in a just manner.
 2. To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 3. To enable the offender reform from his criminal disposition and become a law-abiding person.
 4. 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 demand that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
 5. To protect the community by incapacitating the offender.
 6. To communicate the community's condemnation of the criminal conduct.
31. In this case, it is not in doubt that plea bargains are crucial in the criminal justice system as they work towards reduction of case backlog. It cannot also be overemphasised that for those accused persons who are unable to secure bond for one reason or another, in plea bargain reduces the period an accused person spends in custody while awaiting trial.
32. Therefore, it is not doubted that by entering this plea bargain, the accused person has not only reduced the time he would have spent in custody awaiting trial but also demonstrated his cooperation with the law enforcers and further accepted that he is responsible for the action he took leading to this murder. It is also noted that he has no previous conviction.
33. However, this court has noted the detailed post mortem report dated 27th June 2022 by the Pathologist Dr. Titus Ngulungu, it is noted the deceased sustained various injuries on her body including bruises on the head, neck, hands and on inner surface of her labia minora. There was brain swelling and contusion. Her lungs had collapsed and showed bleeds. The cause of death was Asphyxia due to neck compression in keeping with homicide.
34. There is also no doubt that facts herein simply show the brutality with which the deceased was attacked. Having sex with the deceased while having tied a wire round her neck was savage.
35. She had even vomited and was bleeding by the time the accused had his turn on her. He turned her face down so as to have sex with her from behind. That was callous to the extreme. The intention was for her to die in extreme pain and she surely did. By finally covering her with beddings, the accused ensured that she would not have any chance of being rescued alive and the body would not easily be noted.
36. From the pre-sentence report prepared and dated 24th October 2024 by Mr. Salim A.G Probation Officer, the deceased was an orphan and after her O'Level exams, she travelled to Qatar where she got employment. She had only travelled back home for a holiday and was to travel back. That was not to be. She met this cruel death that cut her aspirations and hope for a bright future.
37. The report reveals that the accused herein belongs to a criminal gang with who he lived in one house in a residential plot in Manyani Estate in Nakuru. Their activities include rape and robbery while armed with weapons. The members are offered money to specifically target young women for death for unknown reasons.



38. The members of this gang are sworn to secrecy and further promised more rewards. For the accused herein, he believes that he was under a certain spell so as to have committed this offence. He has no fixed abode. He lacks social support not only from his family but also the community that is in shock over the viciousness of this gang.
39. In the circumstances, this Court concurs with the Probation Officer that the accused herein is not suitable for a non- custodial sentence. Considering the accused's role herein, the mitigating factors and his quest to reform and stop criminal activities, this Court is satisfied that a determinate, deterrent custodial sentence of 28 years is appropriate to allow proper rehabilitation while in prison, away from the society out there including young women like the deceased herein.
40. Further, under section 333 (2) of the Criminal Procedure, the period he has spent in custody since his arrest be taken into account while computing the custodial sentence. In conclusion, the court makes the following orders: -
1. The accused person is hereby sentenced to serve Twenty Eight (28) years imprisonment.
 2. The sentence to run from the date of arrest.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 14TH DAY OF NOVEMBER, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Kihara for the State

Mr. Opondo for 1st Accused

Evans Michori Kewaro- 1st Accused

Ruto- Court Assistant

