



**Republic v Njeri (Criminal Case E009 of 2022)
[2024] KEHC 14147 (KLR) (14 November 2024) (Sentence)**

Neutral citation: [2024] KEHC 14147 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL CASE E009 OF 2022
DKN MAGARE, J
NOVEMBER 14, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSEPH WACHIRA NJERI RESPONDENT

SENTENCE

1. The accused person was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 (Laws of Kenya). A Plea Agreement was entered on 26/7/2024 whereupon the accused person pleaded guilty to one count of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. He was convicted of the offence of manslaughter contrary to Section 202 as read with 205 of the Penal Code pursuant to the Plea Agreement dated 26/7/2024 and filed on 30/10/2024.
2. The facts of the case are that on the night of 3/7/2022 at Ndima-ini Village, Mathira East Subcounty of Nyeri County, the accused person murdered Joseph Wachira Muriuki. One Harun Waweru Muthoni, an employee of the deceased witnessed the accused who is the nephew to the deceased assault the deceased using a folk Jembe on the head and chest after an argument in which the deceased wanted the accused to vacate his homestead to another house.
3. The postmortem examination was carried out on 13th July, 2022. The cause of death was established to have been chest injuries secondary to a blunt object trauma.
4. Having entered into a plea agreement, the accused person urged this court to give him a noncustodial sentence. On its part, the Prosecution recommended a custodial sentence based on the Probation Report that the community, including the accused person’s siblings were against the Appellant rejoining the community as it was likely that there would be adversity to them and to his own life.



5. According to the Pre-Sentence Report dated 17/11/2024 by Florence M. Gacagua, Probation Officer from Karatina, the accused person was aged 23 years. He completed his Kenya Certificate of Secondary Education (KCSE) examination at Ndimaini Secondary School and attained a D Plus grade. He was unmarried and was abusing drugs. His siblings prayed that a well-wisher accommodates him away from home as the home environment was not conducive for his immediate return.
6. The secondary victims decried the deceased's death. They were resentful and explained that they lost their kin who was helpful and the unifying person in the family. The widow was of the view that she fears for her life as the offender is likely to repeat the offence. She requested that the accused spends more time behind bars and was opposed to any leniency.
7. The negative Pre-Sentence Report resulted in the Probation Officer not recommending a non-custodial sentence. The convict on the other hand, maintained that he has trained and attained useful information. He stated that there was someone who had offered to take care of him. The name did not come out to the court.
8. The facts agreed to relate to the deceased as the aggressor. He was the one who went out of his way to evict the nephew from the house. The deceased who was obviously older and frail viscously attacked the convict who hit him back with a fork jembe. The provocation in strict sense was by the deceased. Nevertheless, the force used by the deceased was disproportionate to the danger posed by the deceased.
9. I do not take the issue of drugs seriously as they are not in the agreed facts. This was from the victim's side. In a plea agreement of this nature, drugs must, ipso facto form part of the agreed facts.
10. This court recognizes that sentencing is one of the most intricate aspects of trial. It complements the trial. The sentencing should be one that meets the end of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to. The objectives of sentencing as set out in the 2023 Sentencing Guidelines are as follows: -

“ 1.3.1 Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other – insofar as possible, sentences imposed should be geared towards meeting the objectives in totality.

Retribution: To punish the offender for their criminal conduct in a just manner.

Deterrence: To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.

Rehabilitation: To enable the offender to reform from his/her criminal disposition and become a law-abiding person.

Restorative justice: To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs. Community.

Protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.

Denunciation: To clearly communicate the community's condemnation of the criminal conduct.



Reconciliation: To mend the relationship between the offender, the victim and the community.

Reintegration: To facilitate the re-entry of the offender into the society.”

11. The sentence also has to be one that is hinged on retributive justice for the secondary victims. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of the accused’s offence at the time of sentencing him, chances of the accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
12. I find that the facts leading to the commission of the offence, however unfortunate, were contributed by the deceased. The convict herein requires psychosocial support, which does not appear to be forthcoming. This makes non-custodial sentence untenable. However, we cannot rule out the elaborate training the 23-year-old convict has undergone.
13. He may need support on anger management and anchoring in the society. The case is complicated given that the secondary victims are also the convict’s family. The convict pleaded with the court not to waste his youth. But of what use is the youth to the convict, if he ends up dead or back to prison?
14. The offence was committed while the offender was 21 years old. He is now 23 years. He has a chance to reform. He has a whole future that the court must safeguard at the same time safeguarding the society. I decry the current trend where violent crimes are committed by the young people. This condemns the entire future to oblivion.
15. The court has considered the facts of this case, his age, views of the victims and community, the circumstances of the case, and in particular the role of the deceased as the aggressor together with mitigation including his training. The court has also considered that the convict opted to plea bargain instead of proceeding to full hearing. The proper sentence in this case should be custodial sentence that is short enough to have regard to the role the deceased played in his death and short enough to take care of the mitigating circumstances and in particular his age and remorse.
16. The non-custodial sentence is ruled out due to lack of community support and possibility of default should the accused be accommodated by the well-wisher that he invited the court to send him to. In the circumstances a sentence of 3 years imprisonment would be proper.
17. Consequently, the convict is sentenced to 3 years imprisonment from the date of arrest on 3/7/2022.

Order

18. The upshot of the foregoing, is that I make the following orders: -
 - a. The convict is sentenced to 3 years imprisonment from the date of arrest on 3/7/2022.
 - b. The file is closed.

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

Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of:-

Ms. Muthoni Kibaara for the Accused



Mr. Mwakio for the State
Court Assistant – Jedidah

