



**State v Nyareru (Criminal Case E014 of 2023)
[2024] KEHC 14507 (KLR) (11 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14507 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL CASE E014 OF 2023**

**TA ODERA, J
NOVEMBER 11, 2024**

BETWEEN

STATE PROSECUTION

AND

CYPRIAN KARURU NYARERU ACCUSED

RULING

1. The offender herein was initially charged with murder contrary to Section 203 as read with 204 of the *Penal Code*. He later entered into a plea bargain agreement with prosecution and the charges were reduced to manslaughter contrary to Section 202 as read with 205 of the *Penal Code*. He pleaded guilty to manslaughter and he was accordingly convicted. This case is now coming up for sentencing. The convict and the deceased who are both married men were each having a love affair with one Pauline Moraa who describes himself as the “victim herein”
2. On the material day at 18:00hours the Pauline and the deceased checked into Villa Hotel in Kisii took meals and hired a room. At about 20: 30 hours, as they were walking out of the hotel, the offender appeared from behind and pulled Pauline towards himself as he drew a knife and threatened to stab Pauline with it but deceased intercepted and he instead stabbed deceased with it on his chest and stomach with the knife and he fell and died on the spot. Mr. Magara the learned Counsel for the offender in mitigation submitted that he is aged 39, family man a father of 3 children of tender years and that the wife is jobless and that the offender was the sole breadwinner of the family. Also that the offender is remorseful and that the wife to deceased had forgiven him by leaving everything to God. It was submitted that the offender entered into a plea bargain agreement which save judicial time and so he ought to be considered for a non- custodial sentence.
3. The pre-sentence report is favourable to him as it indicates that he has no record of criminal conduct, has strong family and community ties and the members of his community do not have any reservations



for his release on a non -custodial sentence. There is also an indication that the wife to deceased was interviewed and she said she left everything to God.

4. The Supreme Court in the Muruatetu case set down the following factors to be considered in sentencing in murder trials;
 - a) Age of the offender.
 - b) Being a first offender.
 - c) Whether the offender pleaded guilty.
 - d) Character and record of the offender.
 - e) Commission of the offence in response to gender-based violence.
 - f) Remorsefulness of the offender.
 - g) The possibility of reform and social re-adaptation of the offender.
 - h) Any other factor that the court considers relevant.
5. I have considered the nature of the offence, its circumstances, the pre-sentence report, mitigation, submissions, the remand period of about 1 ½ years, the age of the offender that the offender saved judicial time by pleading guilty upon entering into a plea bargain agreement, the fact that he is remorseful and the sentiments of the wife to deceased. I agree with defence counsel that the offender deserves leniency for entering into a plea bargain agreement and saved the precious judicial time of the court and expedited the determination of the case. It has emerged from the facts of the case, Mitigation the pre-sentence report and the able submissions by defence filed herein that the deceased died in a love triangle. Though a life was lost in this case and Pauline opposed the prayer for custodial sentence citing her own security but it has emerged that she was in the middle of this love triangle. This is a convoluted crime of passion. The wife to deceased has no issue with the release of the offender on a non- custodial sentence. I find that a non - custodial sentence is thus necessary in the unique circumstances of this case as the offender will have chance to be guided and counselled on anger management as he also goes about his daily work and provides for his young family. I proceed to sentence him to serve 3 years on probation.

14 days Right of appeal

T.A ODERA

JUDGE

11. 11.24

DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF:

The offender

Koima for the State

Court Assistant: Oigo

Mariita: I watch brief for the victim

Magara for the offender for the Offender

