



**Republic v Murage (Criminal Case E034 of 2021)
[2024] KEHC 15885 (KLR) (17 December 2024) (Sentence)**

Neutral citation: [2024] KEHC 15885 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE E034 OF 2021
RM MWONGO, J
DECEMBER 17, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPHAT CHOMBA MURAGE ACCUSED

SENTENCE

1. Charge: The accused person is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are as contained in the Information dated 29th September, 2021 held in the file.

The accused pleaded not guilty to the offence (and - witnesses were heard).
2. PBA: However, a Plea-Bargaining Agreement (PBA) dated 20th November, 2024 and signed by the accused under the advice and counsel of the Defence Counsel and by the State Counsel for the DPP, was subsequently availed in Court on 20th November, 2024 together with the Court Form for Recording of a Plea Agreement dated 20th November, 2024.
3. In addition, attached to the PBA is the Post Mortem Report of the deceased dated 08 September, 2021.
4. The Court is satisfied that the accused had and has full capacity and competence to enter into the PBA; that he fully understood and understands its content and that he entered into and signed the PBA voluntarily.
5. Further, the Court is satisfied that the accused person on being taken, on oath, through his/her rights envisaged in section 137F of the Criminal Procedure Code (CPC) he on oath answered Yes, confirming he understood his rights.
6. Accordingly, on 20th November, 2024 this Court recorded the PBA pursuant to Sec 137 CPC. The Plea Agreement was thus adopted as part of the court record.



7. Accordingly, the accused person was convicted with the offence of Manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#).
8. Under Section 205 of the [Penal Code](#) the punishment for Manslaughter renders the accused liable for imprisonment for life.
9. Mitigation: Directions on Mitigation having been given by the Court, and the Accused's mitigation having been filed and availed in writing, the Court has taken the same into consideration.
10. The Probation Officer's Pre-Sentence Report (POR): Dated 8th May, 2023 has also been availed.
11. The POR highlights are as follows: The accused is 50 years old. He dropped from school in class 6 due to poverty. In 2010, he was employed at Muriuki's farm in Sagana township where he met Monica Wanjuguini and later moved in as husband and wife. They bore two children. In 2021 he was posted by Sanja Security Services in a residential property in Karatina town. He does not have a past history of crime or drug abuse. He committed the offence after finding the victim with his wife on a path. He was furious and armed; they engaged into a fierce fight hitting him with a slasher. After two days, he was arrested together with his wife and charged with the offence of murder before this honourable court. His attitude towards the offence is that he admits and regrets his actions that led to loss of life which were not premeditated. He is remorseful and prays for leniency.
12. In particular, the Victim's family position is as follows: The victim's family resides in Kiangoma village in a settlement scheme. He is survived by one son who is a boda boda rider. He reported that his father's murder was planned and executed by the offender. He is not ready to reconcile with him.

The POR concludes and recommends as follows: the offender expressed uncertainty on his possible community rehabilitation program as he feared the victim's family may avenge for their deceased kin. It recommends that the offender is not suitable for a non-custodial sentence.
13. The Court has also taken into account the Judiciary [Sentencing Policy Guidelines](#) as amended and supplemented by the guidelines given by the Supreme Court in the case of [Francis Karioko Muruatetu & Another v Republic](#) [2017] eKLR.
14. The Court has further taken into account the holding in the case of [Julius Kitsao Manyeso v R](#) [2020] eKLR where the Court of Appeal held that a life sentence is indeterminate and unconstitutional as it constitutes an unjustifiable discrimination and is unfair and repugnant to the principle of equality before the law. As such the life sentence cannot be meted.
15. The Court notes the Factual basis of the PBA, which is as follows:

On 2nd September, 2021 at about 21.40 hrs, the body of the deceased, Charles Muthee Kiambu was found on the foot path with no trouser and inner pants. The body had deep cut wounds on the head with several stab wounds. His inner pants, a coat and a cell phone were recovered some few meters from the location of the body. Preliminary observation showed that the body had been killed somewhere and dumped at the location. The phone found on his coat was traced and found to be using a Sim card registered in the name of Monica Wanjiru Chomba. She was arrested and upon interrogation admitted that she had an extramarital affair with the deceased. On 15th September, 2021 the accused was arrested, he admitted to the affair with his wife that led him to fatally assault the deceased.

Post-mortem was conducted on the body of the deceased and revealed that the cause of death was severe head, neck, chest and abdominal injuries secondary to blunt and sharp trauma.



16. The Court notes from the information supplied by the DPP that information is unavailable as to whether the accused is a first or repeat offender. The state proposes a sentence of 10 years.
17. Time spent in prison: The Court has also taken into account the time spent in prison by the accused, being 3 years since 15th September, 2021.

Disposition

18. Taking into consideration all the above matters, I hereby consider the appropriate sentence to be a custodial sentence. (See In *Republic v Mwangi* (Criminal Case E088 of 2023) [2024] KEHC 367 (KLR) (25 January 2024) (Sentence) the State Counsel recommended that she be sentenced to 10 years' imprisonment for reasons that the accused knew the knife could cause severe injury to the deceased. The court sentenced the accused to 9 years' imprisonment.
19. Accordingly, I sentence the accused to ten (10) years imprisonment taking into account the time already spent in prison by the accused.

Orders accordingly.

DATED AT KERUGOYA THIS 17TH DAY OF DECEMBER, 2024

R. MWONGO

JUDGE

Delivered in the presence of:

Before: Hon. Justice R. Mwango

Court Assistant: Mr. Murage

State Counsel: Mr. Mamba

Defence Counsel: Mr. Otuke

Accused: Present in Court

