



**Republic v Thiaka (Criminal Case E008 of 2021)
[2024] KEHC 15924 (KLR) (17 December 2024) (Sentence)**

Neutral citation: [2024] KEHC 15924 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE E008 OF 2021
RM MWONGO, J
DECEMBER 17, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

MICHAEL KINYUA THIAKA 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 9th March, 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 24th October, 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 28th October, 2019.
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 18th November, 2024 has also been availed.
11. The POR highlights are as follows: The accused is 40 years old. He dropped from school in class 7 due to poverty. He survived by doing casual labour. In 2010, he married Ruth Wangeci and they bore two children. One is 13 years and the other is 7 years old. The wife left the matrimonial home in 2020 with the children and lives in Kiangwai area. She described the offender as a drunkard, short tempered and acknowledged him as the father to her children. He committed the offence after engaging in a fight with his maternal uncle. He stabbed him severally with a kitchen knife leading to his death. He fled the scene but was later arrested and charged with murder. His attitude towards the offence is that he admits but does not appear remorseful. He shifts the blame to the deceased as he killed him in self-defense. He seeks non-custodial sentence.
12. In particular, the Victim's family position is as follows: The victim's mother, Joyce Muthoni Thiaka, is the maternal grandmother to the offender. She describes the offender as a crook and unappreciative. She had posted bail for him in a defilement case but he was not grateful. She prays for a custodial sentence. The POR concludes and recommends as follows: the offender lacks remorse and blames the victim for the incident. He lives a few meters from the victim's mother and has issued death threats to her. 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 20th October, 2019 at about midnight the accused was returning home from a funeral and it was raining. He passed through a path in the deceased's land who saw him trespassing his land. He confronted him at home resulting in a fight. The deceased attacked him with a machete injuring him on the head. The accused went back to the house and emerged with a kitchen knife. He stabbed the deceased fatally. He was rushed to Kerugoya Hospital where he died in the morning.

Post-mortem was conducted on the body of the deceased and revealed that the cause of death was due to massive internal hemorrhage following a penetrating chest and abdominal injury by sharp object.
16. The Court notes from the information supplied by the DPP that there is no evidence that the accused is a 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 9th March, 2021.



Disposition

18. Taking into consideration all the above matters, I hereby consider the appropriate sentence to be a custodial sentence as 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 nine (9) years, imprisonment to take into account the period spent by the accused in custody.

Orders accordingly.

DATED AT KERUGOYA THIS 17TH DAY OF DECEMBER, 2024

R. MWONGO

JUDGE

Delivered in the presence of:

Before Hon. Justice R. Mwongo

Court Assistant: Mr. Murage

State Counsel: Mr. Mamba

Defence Counsel: Ms. Wambui

Accused: Present in Court

