



**Republic v Thomas (Criminal Case 8 of 2023)
[2024] KEHC 15656 (KLR) (9 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15656 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 8 OF 2023
DR KAVEDZA, J
DECEMBER 9, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

DANIEL WAINAINA THOMAS ACCUSED

JUDGMENT

1. The Accused 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 on 10 March 2022. The particulars of the offence were that the Accused Person, on 25 January 2022, at Wasafi Hotel in Hardy in Langata Sub-county within Nairobi County, murdered Benson Mutunga. He pleaded not guilty to the offence and a date for pre-trial directions was set.
2. On 3 October 2024, parties availed to court a duly executed plea bargain agreement and the matter came up for reading of facts. The Accused Person pleaded guilty to the lesser offence of Manslaughter Contrary to Section 202 as read with section 205 of the Penal Code, Chapter 63 Laws of Kenya.
3. This court accepted the Plea Agreement after satisfying itself that the Accused understood his trial rights and had signed the Plea Agreement voluntarily. Accordingly, pursuant to Section 137F of the Criminal Procedure Code the accused was placed under oath in court and addressed by the court through counsel. Following questioning under Section 137F of the Criminal Procedure Code the accused stated in Kiswahili, in part:

Are you aware that by plea bargaining you lose your right to cross examine the witness

Yes

Have you been coerced into signing the plea agreement

No



Do you know that you lose your right to appeal

Yes

Do you also know that the sentence is at the discretion of the court

Yes

4. The court pursuant to Section 137G of the *Criminal Procedure Code* adopted the Plea-Bargaining Agreement having noted that the accused acted voluntarily and was competent and of sound mind. The court then convicted the accused on his own plea for the offence of Manslaughter in accordance with Section 137H (2) of the *Criminal Procedure Code*. The Matter then proceeded to Sentence Hearing.
5. The Prosecution stated that the accused person was a first offender and left it at that. The Learned Counsel for the Accused submitted at length to the effect that:

The Accused was 17 Years old at the time of the offence. The deceased was born in 1992. They were very good friends. They slept on the same bed. It was unfortunate that he killed his friend. There was a fight the previous evening. They used to sleep together but the previous evening they did not sleep together. He is remorseful. He is now 19 years old. He is a son of a single mother. She is ailing. She can hardly walk. The father died in 2012. She cannot earn anything to support them. The accused is asking for a second chance in life. He is traumatized that at his young age he caused the cross of life. He studies in prison. He is now in form 2. We pray for a non-custodial sentence so that he can support his ailing mother
6. On that date, the court directed the probation officer to file a pre-sentence report to guide the court. Also, the court directed the report to include the victims impact statement. The Probation officer's report was filed in court on 14th November 2024.
7. Upon reviewing the Probation Officer's Report, it is noted that the accused has been in custody since March 2022. He is the second-born in a family of two. Following the death of his father, his mother was displaced from the matrimonial home due to a land dispute and now resides with her paternal relatives in an iron-sheet dwelling. The mother is differently abled and suffers from diabetes and stomach ulcers. The accused's sibling, who has mental health issues, depends solely on the mother. The mother pleads for a non-custodial sentence, citing her reliance on the accused for care and medical check-ups. She is willing to support his supervision and rehabilitation if released.
8. The accused is a first-time offender, who dropped out of high school due to financial difficulties. He worked as a boda boda rider before joining the hotel industry. His substance use (alcohol, miraa, and bhang) may have contributed to the offence.
9. The report notes the accused and the victim were friends. The accused expresses remorse, stating that the killing was not intentional, and seeks a non-custodial sentence. The victim's family opposes leniency, citing their exclusion from plea negotiations, and, advocates for institutional rehabilitation.
10. The local chief and assistant chief support a non-custodial sentence, endorsing community-based rehabilitation and affirming the accused's good conduct.
11. The Probation Report concludes and recommends that the accused be sentenced in accordance with section 205 of the *Penal Code*, Cap 63 Laws of Kenya.
12. This hearing on sentencing was held pursuant to the *Muruatetu, Francis Karioko & another v Republic & 6 others* Petition 15 & 16 of 2015; [2017] KESC 2 (KLR) decision, which determined that before



- sentence, mitigating and extenuating circumstances must be heard by the court. Such hearing, the Supreme Court held, constitutes the accused person's right to a fair hearing under Article 50 (2) of the Constitution at which a fair and due consideration of the factors set out in Muruatetu must be considered.
13. The Judiciary Sentencing Guidelines, 2016 and the NCAJ Sentencing Policy Guidelines 2023 contain factors to be considered at sentencing and also the objectives of sentencing. Sentencing is supposed to serve the following purposes:
 - a. Retribution
 - b. Deterrence
 - c. Rehabilitation:
 - d. Restorative justice
 - e. Community protection
 - f. Denunciation
 - g. Reconciliation
 - h. Reintegration
 14. In deciding whether to impose a custodial or a non-custodial sentence, the following factors should be considered:
 - a. Gravity of the offence
 - b. Criminal history of the offender
 - c. Conduct of the Offender
 - d. Protection of the community
 - e. Offender's responsibility to third parties
 15. I have considered these factors, the victim's views and the other views in the Probation officer's report, I have also considered the fact that this is a sentence following a plea-bargaining agreement. Plea bargaining agreements assist in speeding up the process and to attain finality at the earliest time possible.
 16. The victim impact statement in the Probation Officer's Report indicates opposition to leniency, with the victim's family seeking justice. I have considered the circumstances: the accused, now 19, committed the offence at 17, an age when he should not have been employed. Financial hardship compelled him to work to support his mother and ill sibling.
 17. The accused killed his friend and housemate following a disagreement. He has expressed remorse, and the Area Chief supports his rehabilitation, stating that he poses no danger to the community. The Chief advocates for a non-custodial sentence.
 18. Considering the Probation Report, the positions of the accused's family, the victim's family, and the community, I find a custodial sentence appropriate. A life was lost, and a non-custodial sentence may undermine justice by seeming to condone the offence. However, the custodial term shall reflect the mitigating factors presented.



19. The penal section for the offence of manslaughter is contained in section 205 of the *Penal Code* which provides:-

Any person who commits the felony of manslaughter is liable to imprisonment for life.

20. I have considered the Accused's mitigation that he was a first offender, he is remorseful, has reformed, and has exhibited good conduct while in custody. I have also considered the fact that he has saved this court judicial time by engaging in a plea agreement process.
21. I have also considered that he committed the offence when he was a child who should have been in school and not preparing meals in hotels. The society failed him and he surely deserves a second chance in life. He will, therefore, be spared the maximum sentence, which is life imprisonment.
22. The Accused is accordingly sentenced to five (5) years' imprisonment. The sentence shall run from 25th February 2022 the day of his arrest pursuant to section 333(2) of the *Criminal Procedure Code*.
23. Upon release, the convict shall move to Kwale, where the local Chief will be responsible for supervising him and ensuring his successful reintegration into the community. The convict will be required to report to the Chief's office once a month.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 9TH DAY OF DECEMBER 2024.

D KAVEDZA

JUDGE

In the presence of:

Ms. Maina for the State

Ms. Odembo for the Accused

Accused present

Achode Court Assistant

