



**Republic v Wabwire (Criminal Case 43 of 2023)
[2024] KEHC 15635 (KLR) (9 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15635 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 43 OF 2023
DR KAVEDZA, J
DECEMBER 9, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

MERCY WEKESA WABWIRE ACCUSED

JUDGMENT

1. The accused was charged with the offence of murder contrary to section 203 as read with 204 of the *Penal Code*. Following the signing and filing of the plea-bargaining agreement, the accused person was taken through the plea bargain process by the court upon which the court was satisfied that she had voluntarily offered to plea bargain before accepting the plea bargain agreement and that her right to fair trial as guaranteed under article 50(2) of the *Constitution* were not violated or threatened to be violated by the provisions of the plea bargain agreement. The court then read out to the accused person the information for manslaughter and all the elements of the offence which she professed to understand and she admitted the charge of manslaughter, upon which a plea of guilty was entered against her.
2. The prosecution led by Ms. Maina read out to court the facts of the case which facts the court was satisfied that they disclosed the offence charged and upon the court asking the accused whether the facts as read out to her were true or not true, the accused person admitted the facts to be true. She was then convicted on her own plea of guilty for the offence of manslaughter as charged.
3. The facts of the case are as follows: On 3rd September 2020, Collins Omulembete, a resident of Ngando, Riruta, was at his home when he heard a bang at his door. Upon checking, Vincent Owiti, the deceased, entered Collins's house, followed by the accused, armed with a kitchen knife. The deceased fell near the door, screaming, "Oh, oh, Mercy *amenidunga kisu!*" (Mercy has stabbed me). Collins drew the curtains and observed the deceased bleeding profusely from the neck. The accused stood outside the door holding a blood-stained knife, which she later threw into a neighbouring church compound.



4. Collins attempted to administer first aid unsuccessfully. Neighbours, including Jackline, Theresa Osebe, and Irene Awuor, secured the gate and summoned Meshack Nyabuto, a village elder. The elder escorted the accused to the Ngando chief's office and handed her over to Sergeant Gilbert Otieno. He returned to transport the deceased, who was still alive, to Ngando Catholic Hospital. The deceased was later referred to Kenyatta National Hospital, where he succumbed to his injuries the same evening.
5. At the police station, the accused narrated her version of events. She stated that she had married the deceased in 2017 but had separated due to his physical abuse. On the day of the incident, she visited a friend, Anastacia Ngina, a neighbour of the deceased. The deceased found her there and dragged her to his house and assaulted her. In self-defence, she grabbed a kitchen knife and stabbed him once in the neck before fleeing to Collins's house.
6. On 8th September 2020, the kitchen knife was recovered from the church compound. A post-mortem conducted by Dr. Midia on 10th September 2020 revealed the cause of death as haemorrhage due to a stab wound. The accused was assessed on 11th September 2020 and found mentally fit to stand trial.
7. Prosecution exhibits included the kitchen knife (PMFI 1), the post-mortem report (PMFI 2), the P3 form (PMFI 3), the accused's torn black top (PMFI 4), and the deceased's torn brown coat (MFI 5), indicating a struggle.
8. The accused has willingly pleaded guilty to manslaughter under a plea agreement, understanding its contents and signing voluntarily upon legal advice. The accused was assessed at Mathari Mental and Referral Hospital and found fit to stand trial. The prosecution then stated that they had no previous record and therefore the accused should be treated as a first offender.
9. In mitigation, the accused stated that she was 22 years old at the time of the offence, stated that she had married the deceased at 19 while he was 34. She explained that during her time in remand custody, she has undergone self-reflection and recognised her actions were wrong. Coming from a dysfunctional family, she pleaded for leniency and expressed her desire for an opportunity to undergo rehabilitation and lead a meaningful life. The defence urged the court to consider the extent and nature of the injuries suffered by the deceased, emphasising that the incident was a spur-of-the-moment act. The accused expressed deep remorse for her actions and pleaded for a lesser sentence.
10. The victim's relatives expressed profound grief over his death, citing significant psychological and economic strain. Hospital and burial expenses burdened the family, and no support was offered by the offender's family. The victim, a key family resource, especially for his two young children, is deeply mourned. His sister, having endured past losses, struggles to process her grief fully but has expressed forgiveness toward the offender. Both the victim's siblings support the plea agreement, noting the offender's apology and remorse. They affirmed that the offender poses no security risk and do not require protection orders upon her release.
11. Community representatives, including local administrators and village elders from Ngando Estate, acknowledged the history of conflict between the offender and the victim but noted no prior criminal records. While initial community reactions were tense, the situation has stabilised. Though the accused person's return is deemed safe, concerns were raised about potential reactions from the victim's colleagues.
12. Investigating agencies support the plea agreement, recognising the offender's remorse and mitigating circumstances, but noted the lack of support from her family during her custody.



13. I have considered the circumstances giving rise to this incident leading to the death of the deceased, I have also considered the mitigation by the accused and her counsel. The accused is a first offender and has saved the court's time by pleading to a lesser charge of Manslaughter.
14. I have considered her remorse and the fact that she was also a victim of domestic violence. I have further considered the views of the victim's relatives, and the community.
15. Considering all the circumstances of this case, the mitigation and probation report on record, the fact that the accused has saved the court's time and resources by pleading guilty to the charge of Manslaughter, I exercise discretion and sentence the accused person Mercy Wekesa Wambwire to probation for a period of three (3) years. She is directed to report to Kibera Probation Office for further directions.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED THIS 9TH DAY OF DECEMBER 2024

D. KAVEDZA

JUDGE

In the presence of:

Ms. Maina for the State

Ms. Wakabi for the Accused

Accused present

Achode Court Assistant

