



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mugo (Criminal Case E006 of 2024)
[2025] KEHC 15604 (KLR) (30 October 2025) (Sentence)**

Neutral citation: [2025] KEHC 15604 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE E006 OF 2024
EM MURIITHI, J
OCTOBER 30, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

JAMES MURIITHI MUGO ACCUSED

SENTENCE

1. The accused was convicted for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code following a plea bargain agreement which commuted the initial charge of murder contrary to section 203 as read with 204 of the Penal Code. The particulars of the offence of manslaughter were that on diverse dates between 24th January 2024 and 26th January 2024 at Kaitheri village in Kaitheri location in Kirinyaga Central within Kirinyaga County unlawfully killed Penina Wambui Mwai.
2. The facts of the case which the accused voluntarily admitted are set out in paragraph 8 of the Plea Bargain Agreement as follows:

“8. Had the case gone to trial, the Prosecution would have presented evidence sufficient to prove the following facts beyond a reasonable doubt that:

Brief facts surrounding this case

On 22nd January 2024, the accused {James Muriithi Mugo} and the deceased {Peninnah Wambui Mwai} who both Husband and Wife were caught up in a domestic brawl over the deceased's behaviour; having absconded and deserted her home leaving the accused to fend and take care of the children. The deceased sensing danger went to her parent's home but the accused pursued her there. He pleaded with her to accompany him back home which she willingly complied. Upon arrival, the accused became violent and started labeling the



decease with accusation of unfaithfulness in their marriage saying that the deceased had become a prostitute and was moving around with other men leaving him to take care of the children alone.

The accused got exasperated in the process and picked a stick which he used to whip the deceased in the presence of Pw-2 {Patience Nyakio} and Pw-3 {Kingstone Mugo Muriithi} both children of the accused and the deceased.

Pw-1 {Kefah Maringo Ngondi} being the area Chief recalls having been called on the 25th January 2024 at about 2300 hrs by one of his village elders that the accused had killed his wife. That he quickly went to the accused homestead where he was able to ascertain the information to be true and took the initiative to inform the [DCI] Kirinyaga Central. That on the deceased body were visible injuries. That she had bruises on the chest and her hands were swollen. That it was the Police who took the body after processing the scene.

Pw-2 {Patience Nyakio} aged 13 years is the daughter to the accused and the deceased was present on 25th January 2024. She states that she witnessed when the scuffle between the mother and the father started. That the father noticing she was in the room having come from school ordered her to drop her bag and go to play but she refused instead kept watching the father assault the mother. She states that her elder brother

Pw-3 {Kingstone Mugo Muriithi} walked into the compound from School and she tried to persuade him to intervene but he developed cold feet. That she was the one who called Pw-4 {Olive Nyakio} when the center could no longer hold. That by the time Pw-4 arrived, he tried assisting the mother to stand up but she kept falling down and he laid her down with her back facing up where the accused continued assaulting her. That the father on noticing the mother unable to stand, started administering some first aid using a book and left her sleeping on the sofa while he prepared food for the rest of them. That she learned the following day that the mother did not make it.

Pw-3 {Kingstone Mugo Muriithi} the first borne son to the deceased and the accused states that indeed he arrived home from School and attempted to access to the house to change his clothes but the father ordered him out- at the mother asked him for water saying she was getting weak and while on his way out, he met

Pw-4 {Olive Nyakio} who he left with the mother as he went to the shopping center at Kerugoya. And it's only when he comes back that he noticed the mother had indeed weakened. Pw-4 {Olive Nyakio} states that she was called by Pw-2 who informed her to rush and try to intervene as the accused was assaulting the mother. That she arrived at the accused person's and found the deceased being assaulted by her husband. She requested for water which she ably gave. That she tried to assist the deceased but she was very weak even to stand. That he left her with the accused only to learn that she passed own the following day.

Pw-5 {No 59140 Sgt. Richard Nyakora} was the investigating officer who recorded the statements and established that it was the accused {James Muriithi Mugo} who assaulted the deceased on the 25th January 2024.



Dr. Karomo who performed the post mortem formed the opinion the cause of death was due to severe head injury following heavy blunt trauma following an assault.”

3. In Mitigation before the Court, the Accused urged that he had three children and prayed for a non-custodial sentence for purposes of taking care of the children now as the sole parent.
4. In written Mitigation pre-recorded and filed by Counsel dated 25/11/2024, the accused pleaded as follows:

“Mitigation

Your Lordship, the accused prays that this honourable court do consider the following in mitigation:

1. That the accused is a 42 years old man.
2. That the accused is a father of 3 children aged 9years, 12 years and 14 years all being minors.
3. That the accused before his arrest was the sole bread winner.
4. That the children are now under the care of their aunt and the same has become a heavy burden.
5. That the accused person is remorseful.
6. That the accused pleads for leniency from court.
7. That the accused has never been involved in any other criminal offence.
8. That the accused also prays for a pardon of the offence.

We are most obliged.

Dated at Kerugoya this 25th day of November 2024

Nyaga Gitari & Co.

Advocates For The Accused”

5. The Probation Officers presentence report dated 22/11/2024 found the accused unsuitable for non-custodial sentence as follows:

“Conclusion

Your Lordship the offender is aged forty two years and is seventh born in a family of eleven children. He was married to the deceased in this matter and together they have three children who are not of age and still schooling. His level of education is low and neither does he possess any marketable skills. He admits commission of offence and regrets beating the deceased to death. He pleads for the mercy of this court stating that he is now a reformed person who is willing to perform non-custodial orders without fail if granted a chance. He is not a first offender with a conviction in CR221/208/2023. Albeit his family disapproves of his previous behaviors including those criminal in nature, they believe that he changed and prays that he be given another chance through non-custodial sentence so as to take care of his young children. The victim's family narrated the psychological, economic and



social effects emanating from the death of their loved one is still fresh in them and would wish for the court to grant them justice accordingly. They do not believe that he is suitable for non-custodial sentence and neither do they wish for reconciliation and restitution. Members of the affected communities vehemently opposed to his release on non-custodial sanctions owing to his unbecoming behaviors. My lord we observe that the offender has a past criminal history where he served 60 days jail term in the year 2023 for possessing 20 rolls of cannabis sativa. In addition, he has several criminal behaviors including constant sell and use of cannabis which he attests theft of property and offensive conduct; some of which were solved through the local administration and others went unreported due to fear of victimization by the affected. Notwithstanding his admission of offence and remorse, his safety in the community is not assured as the public is still angered. The criminogenic factors identified are the offender's use of illegal drugs, use of alcohol with negative effects, poor family relationship without assuring support, previous criminal history where he was incarcerated and released just before this incident, lack of proper education thus no employment and steady income, negative associates and improper use of his recreational time. These factors will require him to undertake concrete dynamic changes if proper reforms are to be achieved. We find his chances of reoffending to be high.

Recommendation

Your Lordship, we find the offender unsuitable for non-custodial sentence and recommend that he be dealt with as per section 202 as read with section 205 of the Penal Code chapter 63 laws of Kenya.

Pauline Lechipan

Probation Officer,

Kerugoya

Dated 22/11/2024

Determination of the appropriate Sentence

6. The Court has noted this case as a case of prevalent Gender based Violence especially against females in marital or quasi-marital relationships. The accused herein has, according to the Probation Officer's Pre-sentence Report, a history of substance, alcohol and drug abuse, and is a repeat offender. Such an offender requires a custodial sentence for purposes of reform through Prison discipline and training towards rehabilitation and eventual re-integration into the society. The Court accepts the guidance of the Probation Officer as to the risk of reoffending and the need for the accused to undergo reformation programmes at the Prison.
7. The accused's plea for sole provider status for his children must be rejected as he is the author of the situation and perpetrator of the incident which deprived the children of their deceased mother, the victim herein, and it is truly rather an aggravating circumstance. The case calls for retribution targeted towards his reformation and for purposes of deterrence of similar conduct by others. It is also an aggravating factor that the fatal assault was carried in the presence and in spite of pleas for mercy from the minor children of the accused and the deceased, who as natural consequence live with the trauma.
8. The Court considers a custodial sentence of imprisonment for eight (8) years to meet the justice of the case.



9. As the accuse has been in pre-trial detention since arraignment on 14/2/2024, the imprisonment sentence shall commence from that date in accordance with section 333 (2) Proviso of the Criminal Procedure Code.

Appeal

10. In accordance with section 137L of the Criminal Procedure Code, the Accused under a plea bargain agreement may only appeal from the sentence for legality or severity, as follows:

“137L. Finality of judgement

- (1) Subject to subsection (2), the sentence passed by a court under this Part shall be final and no appeal shall lie therefrom except as to the extent or legality of the sentence imposed.
- (2) Notwithstanding subsection (1), the Director of Public Prosecutions, in the public interest and the orderly administration of justice, or the accused person, may apply to the court which passed the sentence to have the conviction and sentence procured pursuant to a plea agreement set aside on the grounds of fraud or misrepresentation.

(3)Where a conviction or sentence has been set aside, under subsection (2), the provisions of section 137J shall apply mutatis mutandis.[Act No. 11 of 2008, s. 3, Act No. 12 of 2012, Sch.]”

Orders

11. Accordingly, for the reasons set out above, the Court having convicted the accused for the offence of manslaughter contrary to section 202 as read with 2025 of the Penal Code now sentences the accused to serve imprisonment for eight (8) years.
12. As the accused has been in custody since arraignment on 14/2/2024, the sentence of imprisonment or eight years shall commence of 14/2/2024 in terms of section 333(2) Proviso of the Criminal Procedure Code
13. In terms of section 137L, having pleaded guilty under a plea bargain agreement to the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code, the accused may only appeal from the sentence, as he may be advised by his Counsel.

Orders accordingly.

DATED AND DELIVERED THIS 30TH DAY OF OCTOBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mamba for the DPP.

Mr. Nyaga Gitari for the Accused.

