



**Barasa alias Munika v Republic (Criminal Appeal 10 of 2020)
[2025] KECA 236 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KECA 236 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL 10 OF 2020
HM OKWENGU, HA OMONDI & JM NGUGI, JJA
FEBRUARY 13, 2025**

BETWEEN

JOSEPH SIAPUTA BARASA ALIAS MUNIKA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the judgment of the High Court of Kenya at
Bungoma (Riechi, J.) dated 19th November, 2019 in HCCRC No. 36 of 2018)*

JUDGMENT

1. The appellant, Joseph Siaputa Barasa, was the accused person in the trial before the High Court at Bungoma in Criminal Case No. 36 of 2019. He was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence were that on the night of 22nd November, 2018, at Mayekwe village, Mayekwe sub-location, Lwandanyi location in Bungoma West Sub-County within Bungoma County, the appellant murdered Maximilla Kwakwa Wasilwa.
2. Initially, the appellant pleaded not guilty to the charge and the hearing took off. However, mid-trial, after four prosecution witnesses had testified in court, the appellant agreed to a plea agreement whereby he pleaded guilty to a lesser charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*.
3. The facts disclosed in the plea agreement are as follows:

“On 22/11/2018 at Mayembe sub location, Lwandani Location, Bungoma West Sub-County, Bungoma County, the accused went to his house at 4pm. He found his daughter aged 11 years old preparing porridge for her siblings. He asked to know the whereabouts of the deceased who was his wife. Brigid told accused that deceased had gone to buy food



at Luandani. Accused then went in search of deceased. At 8pm, he came back home with the deceased while flogging her with a piece of wood. The deceased was crying and was visibly drunk. Accused pulled deceased into the house. Accused was shouting to deceased that she should go and look for another husband. Brigid the daughter saw accused knocking the head of deceased against the wall. The deceased then collapsed. Accused then gave her a concoction of sugar and water. The deceased regained consciousness. He again beat her and left her and went to sleep. The daughter Brigid attempted to feed her with food but she declined and asked her for water. Brigid left deceased and went to sleep.

At 2am accused went to check on condition of deceased. He found her unconscious. He went and fetched his brother Abraham to come. He came and they went to Lazarus Kiberenge, a nurse, who came and informed them the deceased was dead. He advised them to take her to hospital. Matter was reported to Lwandani Police. Accused threatened to commit suicide but was restrained. People came and body was taken to Bungoma Hospital. A postmortem was conducted and cause of death was due to assault. The postmortem was produced as exhibit. The accused was later charged with the present offence.”

4. The trial court accepted the plea agreement and the appellant confirmed the facts to be correct. The learned Judge, then, convicted him of the offence of manslaughter on his own plea of guilty. He was then given an opportunity to mitigate, whereby he stated that: he was remorseful and prayed for leniency; he was the husband to the deceased and they had seven children who were between ages 1 and 16 years; the children were under the care of the appellant’s maternal grandmother and have no one else to take care of them; and he is an orphan and the only surviving parent to his children.
5. Upon considering the offence, the circumstances thereof, the appellant’s mitigation, the victim impact report of the deceased’s family, and the fact that the appellant was a first offender, the learned trial judge stated thus:

“The Court has considered the fact that he is a first offender and what has been stated in mitigation. The Court has also considered family impact assessment filed. The Court notes that the offence is serious and led to the loss of the life of deceased. Accused is sentenced to thirty (30) years imprisonment.”
6. The appellant was aggrieved by the sentence imposed on him by the High Court and has lodged the present appeal. He has raised one (1) ground in his Memorandum of Appeal, impugning his sentence for being harsh and excessive and one that defeats the logic of plea bargaining.
7. Consequently, he has prayed that the appeal be allowed, the sentence imposed be set aside and a new sentence be imposed.
8. The appeal was argued by way of written submissions by both parties. During the virtual hearing, learned counsel, Ms. Imbaya appeared for the appellant, whereas learned counsel, Ms. Mwaniki, prosecution counsel, appeared for the respondent. Both parties relied on their submissions.
9. This is a first appeal. Accordingly, the role of this Court is to re- evaluate evidence, assess it, weigh it as a whole, and reach our own independent conclusions. In doing so, we are required to remember that we neither saw nor heard the witnesses, for which we must make allowance. See *Okeno vs. Republic* [1972] EA 32.
10. The appellant argued that the sentence of thirty years imprisonment was manifestly excessive in the circumstances of this case. The circumstances, the appellant argued, were he entered into a plea agreement and spared the court and the victims time and emotional trauma of trial. The appellant



also argued that the sentence was not within the range of sentences imposed by courts in similar circumstances i.e. where a person pleads guilty for manslaughter. She cited Republic vs. Samson Merin, [2020] eKLR (where the court imposed a sentence of 8 years in a case where the convict, who had killed his brother-in-law during a family dispute, pleaded guilty pursuant to a plea agreement);

Republic vs. Samuel Kirui, [2021] eKLR (where, the court imposed a sentence of three years for a convict who concluded a plea agreement having accepted that he killed his brother); and Boniface Muteti Kioko vs. Republic, [1983] eKLR (where, on appeal, the convict's sentence was reduced to five years imprisonment for killing another man.)

11. The appellant argued that the severe sentence imposed did not fully consider the place of plea bargaining in the criminal justice system. She argued that the appellant has reformed and is ready to be rehabilitated back into society as no adverse reports have been made during his incarceration. Thus, this court should substitute his sentence with the period of time he has spent in custody since his arrest, which totals to 5 years and 6 months, and set him at liberty so that he can take care of his children.
12. Although in her written submissions, Ms. Mwaniki had opposed the appeal and defended the sentence imposed on the grounds that the aggravating circumstances in the case were quite weighty. However, during the plenary hearing, Ms. Mwaniki softened her stance and conceded that the sentence of thirty years imprisonment was excessive in the circumstances of the case.
13. We have considered the circumstances of the offence, the aggravating as well as the mitigating circumstances in the case. We agree with the appellant that the sentence imposed was excessive in the circumstances.
14. In the present case, the appellant entered into a plea agreement and pleaded guilty to the offence of manslaughter. It is true that the facts disclosed in the plea agreement showed serious aggravating circumstances: this was a gender-based offence; and, although there was no malice aforethought, the length during which the appellant kept assaulting the deceased even administering first aid in between showed little disregard for her. The fact that it happened in the presence of at least one of their children is also an aggravating factor. The question is whether the circumstances were such that they justified the severe sentence of thirty (30) years imprisonment was justified.
15. As the respondent concedes, the guilty plea in this case was a product of a plea agreement. Plea agreements serve an important beneficial role in the Criminal Justice System. They increase the efficiency of the system by saving time and money which would otherwise be spent on lengthy trials. They also benefit the victim and/or her family because they are spared the public trial and its accompanying emotional trauma. Further, plea agreements offer more certainty to both the prosecutor (and victims of the crime) and the accused person. It is, therefore, a judicial policy to encourage and incentivize plea agreements in appropriate cases.
16. The guilty plea pursuant to a plea agreement is a defining extenuating factor in this case. Further, the fact that the appellant was a first offender and was remorseful as well as the fact that his familial situation was disclosed. All factors pleaded in mitigation should also have been considered as extenuating circumstances.
17. Taking all these factors into consideration and balancing them with the aggravating circumstances pointed out above, we are of the view that the sentence imposed was manifestly excessive. We, consequently, set it aside. In its place, we substitute a sentence of fifteen (15) years imprisonment for the offence of manslaughter. Additionally, by dint of section 333(2) of the *Criminal Procedure Code*, the sentences shall be computed to run from 3rd December, 2018 when the appellant was first arraigned in court since he has remained in custody since then.



18. Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 13TH DAY OF FEBRUARY, 2025.

HANNAH OKWENGU

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JUDGE OF APPEAL

H. A. OMONDI

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JUDGE OF APPEAL

JOEL NGUGI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

