



**Misati v Republic (Criminal Appeal 248 of 2019)
[2024] KECA 1491 (KLR) (25 October 2024) (Judgment)**

Neutral citation: [2024] KECA 1491 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL 248 OF 2019
HM OKWENGU, HA OMONDI & JM NGUGI, JJA
OCTOBER 25, 2024**

BETWEEN

LUCAS NYAWACHI MISATI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the Judgment of the High Court of Kenya at Kisii
(Karanjah, J.) dated 29th February, 2016 in HCCRA No. 128 of 2013)*

JUDGMENT

1. The appellant herein, Lucas Nyawachi Misati, was originally charged with four counts of the offence of murder contrary to section 202 as read with section 204 of the *Penal Code*. The subjects of the four counts of murder were Toto Misati, Naomi Mogutu, Ofonyo Misati and Brian Misati. They were all young children of the appellant.
2. After initially denying the charges, the appellant accepted a plea agreement through which he agreed to plead guilty to charges of manslaughter with respect to all the four counts. By the terms of the plea agreement, the appellant pleaded guilty to four counts of manslaughter contrary to section 202(1) as read with section 205 of the *Penal Code* – one respecting each of the four children. The plea agreement was accepted by the Court on 29th February, 2016. The Court (J.R. Karanja, J.), then, invited the appellant to offer his mitigation.
3. Through his counsel, the appellant mitigated that he was remorseful for his actions; that the actions were caused by unreasonable anger following disagreement with his wife, anger which was fueled by excessive alcohol; that the appellant had other children to take care of; and that he was a first offender. He pleaded for leniency.



4. In pronouncing sentence, the learned Judge stated as follows:

“Accused pleaded guilty; first offender; mitigation noted. However, circumstances of the case must be treated with seriousness deserved. Even if accused had a quarrel with his wife, it had nothing to do with the children. Why take the lives of the children who were completely innocent in the entire state of affairs? The facts clearly placed this case at a higher degree. The accused is therefore very lucky that the prosecution agreed to reduce the charge. He does not deserve a non-custodial sentence but a very long custodial sentence to keep away his murderous inclinations from members of the public.”
5. The learned Judge proceeded to sentence the appellant to fifty (50) years imprisonment for each of the four counts but ruled that the sentences were to run concurrently.
6. The appellant is aggrieved by the sentence and is before us on first appeal against it. In his ground of appeal, the appellant states that the sentence imposed was harsh and excessive, considering the mitigation given. In the filed submissions, the appellant argues that the sentence given was disproportionate given that the applicant had pleaded guilty and hence saved the family the trauma of going through a trial in addition to saving judicial time.
7. The appellant also argues that the sentence imposed goes against the Sentencing Policy Guideline because it does not reflect the type of sentences that courts impose for similar offences. Arguing that the same sentence should generally be imposed for the same offences committed by offenders in similar circumstances, the appellant cites several cases where an accused person pleaded guilty to manslaughter in a bid to demonstrate that the sentence imposed here, fifty years imprisonment, is excessive. The appellant cites: *Bernard Kimani Gicheru v Republic* [2002] eKLR (where a sentence of nine years imprisonment was imposed); *Michael Nyakagwa v Republic* [2011] eKLR (where a sentence of 5 years imprisonment was imposed on a man who pleaded guilty to killing his wife); and *Cecilia Mwelu Kyalo v Republic* [2009] eKLR (where this Court reduced a sentence of 30 years imprisonment to 14 years imprisonment in a manslaughter conviction which had been plea-bargained). The appellant urged us to interfere with the sentence and impose a sentence which offers a realistic opportunity of rehabilitation.
8. The State is opposed to the appeal. In short, the State finds no reason for us to interfere with the sentence, pointing out that there were serious aggravating circumstances which drove the learned Judge to impose the unusually stiff sentence.
9. The parties filed written submissions in support of their respective positions. During the plenary hearing of the appeal, Ms. Omollo, learned counsel, appeared for the appellant while Ms. Kitoto, Senior Prosecutions Counsel, appeared for the respondent. Both advocates relied entirely on their filed submissions.
10. As this is a first appeal, this Court is under a duty to re-evaluate the prosecution evidence and reach its own conclusions including on factors that influence a proper sentence - see *Okeno v Republic* [1972] EA 32.
11. In the present case, the appellant entered into a plea agreement. The facts disclosed in the plea agreement show that the appellant had a violent disagreement with his wife during which he stabbed her. As she went to the hospital for treatment, the appellant appears to have attacked their four children in a drunken rage and killed all four by asphyxiation.



12. These facts moved the learned Judge to conclude, correctly in our view, that the circumstances of the case showed serious aggravating circumstances. The question is whether the circumstances were such that the clearly “Methuselah” sentence of fifty (50) years imprisonment was justified.
13. 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.
14. In the present case, despite the plea agreement, the learned Judge imposed a plainly severe “Methuselah” sentence for the for the offence of manslaughter. With respect, we think the learned Judge erred. This is because the fact that the appellant had agreed to a plea agreement with its attendant benefits as enumerated above, should have been treated as a weighty extenuating factor in the sentencing. 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.
15. We also note that the learned Judge was probably persuaded that what he was dealing with was murder hence his use of the words “murderous inclinations” during sentencing. If the learned Judge was persuaded that the prosecution should not have offered the plea bargain in the circumstances of the case, then he ought to have rejected it. A court cannot accept a plea agreement on a lesser charge than the one at hand and then sentence the accused person as if he had been convicted of the more serious offence.
16. Taking all these factors into consideration and balancing them with the aggravating circumstances pointed out by the learned Judge, 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 twenty-five (25) years imprisonment for each of the four counts. The sentences shall run concurrently. Additionally, by dint of section 333(2) of the *Criminal Procedure Code*, the sentences shall be computed to run from 21st November, 2013 when the appellant was first arraigned in court since he has remained in custody since then.
17. Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 25TH DAY OF OCTOBER, 2024.

HANNAH OKWENGU

JUDGE OF APPEAL

H. A. OMONDI

JUDGE OF APPEAL

JOEL NGUGI

JUDGE OF APPEAL

I certify that this is a true copy of the original

Deputy Registrar

