



**Lukorito v Republic (Criminal Appeal 15 of 2019)
[2023] KECA 1447 (KLR) (24 November 2023) (Judgment)**

Neutral citation: [2023] KECA 1447 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL 15 OF 2019
HM OKWENGU, HA OMONDI & JM NGUGI, JJA
NOVEMBER 24, 2023**

BETWEEN

JULIUS WAFULA LUKORITO APPELLANT

AND

REPUBLIC RESPONDENT

*(Appeal from the Judgment of the High Court of Kenya at Bungoma
(Aroni, J.) dated 9th December, 2017 in HCCRA No. 9 of 2015)*

JUDGMENT

1. The appellant was arraigned before the High Court at Bungoma in Criminal Case No. 9 of 2015 charged with murder contrary to section 203 as read with section 204 of the *Penal Code*. The appellant agreed to a plea agreement where he pleaded guilty to a lesser charge of manslaughter contrary to section 202(1) as read with section 205 of the Penal Code.
2. The High Court (Ali-Aroni J., as she then was) accepted the plea agreement and conducted a short sentence hearing at the conclusion of which the learned Judge sentenced the appellant to life imprisonment.
3. The appellant is dissatisfied with the sentence imposed and has filed the instant appeal. The single ground taken up by the appellant and his counsel was that the sentence is manifestly harsh in the circumstances of the case. In particular, the appellant argues that since conviction was a result of a plea agreement, it was not open to the judge to impose the severest sentence for the offence for which the appellant pleaded guilty. This is so, the appellant argues, because the appellant was a first offender; was remorseful; and placed before the learned Judge his familial circumstances. The appellant also argues that our emerging jurisprudence holds indeterminate life imprisonment to be unconstitutional because it is inhumane and degrading treatment. The appellant urged us to set aside the sentence imposed by the High Court and, instead, substitute it with a sentence of ten years imprisonment.



- He argues that ten years imprisonment is more commensurate with the crime committed in the circumstances.
4. The State concedes to the appeal to the extent that it finds the sentence of life imprisonment in the circumstances of this case to be disproportionate. The State also cautions that imposing the maximum sentence on an accused person who has entered a plea bargain may have the unwelcome effect of discouraging future accused persons from concluding plea agreements even in cases where such plea agreements would serve the objectives of the Criminal Justice System better. The State, however, recommends a prison term of twenty (20) years in this case given the aggravating circumstances involved.
 5. 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.
 6. In the present case, the appellant entered into a plea agreement. The facts disclosed in the plea agreement show that the appellant went home drunk. He was served food by the deceased, who was his wife. He rudely poured the food on the ground. He then proceeded to pour maize and beans which were in the house on the ground provoking a bitter quarrel with the deceased. The appellant hit the deceased with a metal bar. He then dragged her out of the house where she later died. All this happened in the presence of his and the deceased's eight-year-old son.
 7. These facts moved the learned Judge to conclude, correctly in our view, that the actions of the appellant were "inhuman and barbaric [,] have no place in the 21st Century and must be condemned in the harshest terms possible." The learned Judge then imposed the sentence of life imprisonment.
 8. 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.
 9. In the present case, despite the plea agreement, the learned Judge imposed the severest sentence available 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 an 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 taken into account as extenuating circumstances.
 10. Taking all these factors into consideration and balancing them with the aggravating circumstances pointed out by the learned Judge – that the assault was carried out in barbaric fashion; that it was gender-based violence; and that it was carried out in the presence of a young child – we are of the view that the sentence of life imprisonment imposed was manifestly excessive. We, consequently, set it aside. In its place we substitute a sentence of fifteen (15) years imprisonment.
 11. Orders accordingly.

DATED AND DELIVERED AT KAKAMEGA THIS 24TH DAY OF NOVEMBER, 2023

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.

