



REPUBLIC OF KENYA



**Republic v Mwangi (Criminal Case E088 of 2023)
[2024] KEHC 367 (KLR) (25 January 2024) (Sentence)**

Neutral citation: [2024] KEHC 367 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E088 OF 2023
HM NYAGA, J
JANUARY 25, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

ANN MUMBI MWANGI ACCUSED

SENTENCE

1. The accused was initially charged with Murder contrary to Section 203 as read with 204 of the Penal Code. The particulars were that on 28th January, 2023 at Rhoda area Nakuru West Sub-County within Nakuru County she murdered Lucy Wanjiru Muigai.
2. When accused was arraigned in court on 15th February, 2023 she pleaded not guilty to the charge.
3. Subsequently, on 20th April, 2023, the defence sought to engage in a plea bargaining agreement, to which the prosecution consented. Thereafter, the parties entered into a plea bargaining agreement pursuant to the provisions of Section 137A to 137E of the *Criminal Procedure Code* (CPC), duly signed by the Prosecution and defence counsel on 4th May, 2023 and 13th June, 2023 respectively.
4. The court examined the accused in accordance with Section 137F of the Criminal Procedure Code and established that the plea bargain was unequivocal and was entered into voluntarily, as provided for under section 137G. It then accepted the plea agreement.
5. Thereafter the charges were reduced to Manslaughter, contrary to section 202 as read with section 205 of the Penal Code. The elements of the charge were then read out to the accused who pleaded guilty and subsequently admitted the facts as set out in the plea bargain agreement. She was then convicted on her own plea of guilty. The post mortem report was produced as Exhibit No.1.
6. In her sentencing submissions, the State Counsel recommended that she be sentenced to 10 years' imprisonment for reasons that the accused knew the knife could cause severe injury to the deceased.



7. The defence counsel, Mr. Githaiga, in his submissions and mitigation, pleaded for leniency and stated that the accused is a mother of 3 children and a first time offender. He submitted that the accused has been through exceptional circumstances as her mother died when she was 17 years old and was abandoned by her father. He stated that the accused got married and her husband abandoned her with her three children and she resorted to drinking, and at the time of the offence she was drunk hence the reason she couldn't control her anger. He submitted that the deceased hurled obscenities at the accused and slapped her and that after the offence the accused reported the same at the police station. He asserted that the accused pleaded guilty and as such she did not waste court's time and that while in prison she did crocheting course.
8. He prayed that a non-custodial sentence be imposed to enable the accused to take care of her children and put her skills into practice.
9. On 3rd October, 2023, I ordered for a presentence report to be filed. The same was duly filed on 20th November, 2023. According to the report, the accused person's parents separated when she was about 12 years old. After the separation, the accused moved with her mother together with her two sisters to Nakuru County-Rongai area where her mother hailed from. The Accused person's mother however had no close relations with her immediate relatives but she lived there up to her time of demise in 2016. The accused person's two elder sisters also passed away and the accused continued to stay alone. The accused family comprised of 8 siblings four of whom are now deceased. The remaining siblings have no close family ties and none of them care about the other. The accused alienated herself from her family and relatives and therefore she has no social support system. The accused is 35 years old and she schooled up to class two then dropped out. She has two children aged 20 and 9 years old respectively. Her elder son lives in Mlolongo where he does casual jobs while her daughter was taken by well-wishers to the children's home after the accused neglected her. The accused is said to have been working as a commercial sex worker in Salgaa and later moved to Nakuru.
10. The report suggests the accused could be a flight risk as she has no house in Nakuru and she has no close ties with her relatives and therefore it is unclear where she will stay if considered for a non-custodial sentence. The accused and the victim worked together as commercial sex workers and the offence occurred over a dispute of turf ownership. The accused was seen as an intruder at the premises where the victim was working. The accused admitted stabbing the victim with a knife. However, she does not take responsibility for reasons that the victim was to blame for starting the fight.
11. From the same report, it is stated that the victim left behind two children who are still minors. The victim's father stated that he had not received any positive communication from the accused or her family and prayed that court gives justice to his daughter.

Analysis & Determination

12. The only issue for determination is what would constitute an adequate, appropriate and just sentence in the circumstances of this case?
13. The Supreme Court in *Francis Karioko Muruatetu & Another vs Republic*, Petition No. 15 of 2015, as a guide in sentencing held that:

“...the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- a. age of the offender
- b. being a first offender;



- c. whether the offender pleaded guilty;
- d. character and record of the offender;
- e. commission of the offence in response to gender-based violence;
- f. remorsefulness of the offender;
- g. the possibility of reform and social re-adaptation of the offender;
- h. any other factor that the Court considers relevant.”

14. The Supreme Court in *Muruatetu Case* (supra) appreciated that:

“In Kenya, many courts have highlighted the principles of sentencing. One such case is the High Court criminal appeal decision in *Dahir Hussein v. Republic* Criminal Appeal No. 1 of 2015; [2015] eKLR, where the High Court held that the objectives include: “deterrence, rehabilitation, accountability for one’s actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim.” The 2016 Judiciary of Kenya Sentencing Policy Guidelines lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

“Sentences are imposed to meet the following objectives:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.
5. Community protection: To protect the community by incapacitating the offender.
6. Denunciation: To communicate the community’s condemnation of the criminal conduct.”

15. I have considered the circumstances of the case, the submissions by the State Counsel and the mitigation by the defence counsel.

16. According to the facts of the case, on 28th January, 2023 at around 1600hours the accused went to green grocery to buy a mango. After selecting a mango she asked for a knife to peel it. While peeling it, the deceased who happened to have been following her reached the grocery and seemed to be just passing by her. The accused within a span of a second approached her and stabbed her. The deceased fell down and started bleeding. The accused escaped from the scene but later she surrendered herself



to the police at Rhonda Police Station. The deceased was rushed to the Provincial General Hospital by good Samaritans where she succumbed to the injuries while undergoing treatment.

17. According to the post mortem report the deceased died as a result of cardiac muscle injury with blood loss due to a single stab wound to the chest.
18. In terms of Section 202 as read with section 205 of the *Penal Code*, the accused upon being convicted is liable to serve life imprisonment. However, this represents the maximum sentence which is usually reserved for the most aggravated of such cases. I do not consider this to be a case falling in the said category.
19. The discretion in sentencing rests with the trial judge because he or she has the knowledge of the relevant facts before him or her and in many instances, has observed the accused and witnesses' demeanour. The discretion must however be exercised judiciously. In the persuasive Nigerian case of *African Continents Bank vs Nuamani* [1991] NWLI (part 86) 486, it was observed that,

“The exercise of court’s discretion is said to be judicial if the judge invokes the power in his capacity as a judge qua law. An exercise of discretionary power will be said to be judicial, if the power is exercised in accordance with the enabling statutes, discretionary power is said to be judicious if it arises or conveys the intellectual wisdom or prudent intellectual capacity of the judge. The exercise must be based on a sound and sensible judgment with a view to doing justice to the parties.”
20. The mitigating factors that I have taken into consideration are, first, that the accused readily pleaded guilty and thus saved the court on judicial time. Secondly, the accused is a first offender.
21. It is well settled law that a sentence must reflect the accused’s blameworthiness for the offence. See *Omuse vs R* (2009) KLR 214, where it was held that the sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that the proper exercise of discretion in sentencing requires the Court to consider that fact and circumstances of the case in their entirety before settling for any given sentence.
22. In this case, there is no evidence that the deceased instigated a fight. According to the facts that were read by the prosecution and which the accused admitted to be true, the deceased was just passing by the green grocer when the accused stabbed her. The deceased was not armed and as such the accused was not in any imminent danger of attack from the deceased. It was therefore unnecessary for her to use excessive force against the deceased that led to her death. The accused knew or ought to have reasonably known that in using the knife, she was likely to kill or cause grievous harm to the deceased. Her actions were indeed unlawful.
23. According to the victim impact statement (VIS) contained in the pre-sentence report, the Accused Person has never bothered to express remorse to the family of the Deceased or in any way seek reconciliation.
24. In the circumstances of this case, I find a non-custodial sentence as sought by the accused is inappropriate. The accused needs to feel the consequences of the crime she committed. A custodial sentence will rehabilitate her and send a warning to others that it does not pay to take law into one’s hands and that violence do not pay at all.
25. I have looked at cases of similar nature. I would add a rider that no two cases are identical.



26. For instance, the Court of Appeal has made its opinion known over the matter. In *Wanyonyi vs The Republic* [1980] KLR 116 (Madan, Law and Potter, JJA) the appellant had been convicted on his own plea of guilty to manslaughter and sentenced to imprisonment for 8 years. The Court held as follows:-

“The sentence for eight years imprisonment can’t be said to be wrong in principle, but we feel that the appellant may have been very much under the influence of the chang’aa he had admittedly consumed on the afternoon of the crime, to the extent of influencing his resentment against the deceased. In the circumstances and having regard to the appellants previous good character and to his long period of detention before trial (fifteen months) we feel that his sentence is indeed heavy and reduce it to one of five years imprisonment.”

27. Similarly, in *Wero vs R.* (1983) KLR 349, the same Court (Madan, Kneller JJA. & Chesoni, Ag. JA.) in circumstances almost similar to those herein, the accused had been charged with murder but was convicted for manslaughter and sentenced to eight year’s imprisonment, after he plead guilty to the reduced charge. The court held that –

“The sentence of eight year’s imprisonment where the case was on the borderline between murder and manslaughter was legal, appropriate and not manifestly excessive.”

28. In *Andrew vs R* (1980) KLR 153, another case of plea of guilty to a reduced charge of manslaughter, the Court of Appeal (Madan & Potter JJA. & Simpson, Ag. JA.) considered the period of almost one year that the appellant had been in custody and reduced a sentence of imprisonment for eleven years to five years.

29. The court has to balance between the need to have the accused atone for her actions and the need to exercise leniency, given the circumstances of the case. In this regard I think that the sentenced proposed by the State is appropriate and within the range of sentences meted out in similar cases.

30. Having considered all the circumstances of the case I hereby sentence the accused to nine (9) years imprisonment.

31. Under Section 333(2) of the *Criminal Procedure Code*, the accused’s sentence will commence on 15th February, 2023 when she was first remanded into lawful custody.

32. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 25TH DAY OF JANUARY, 2024.

H. M. NYAGA,

JUDGE.

In the presence of;

Wanjiku for state

Accused present

