



**Republic v Mwangi (Criminal Case E002 of 2020)
[2024] KEHC 2206 (KLR) (29 February 2024) (Sentence)**

Neutral citation: [2024] KEHC 2206 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL CASE E002 OF 2020
AK NDUNG’U, J
FEBRUARY 29, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

FRANCIS MUTAHI MWANGI ACCUSED

SENTENCE

1. Francis Mutahi Mwangi had been charged with an offence of murder contrary to section 203 and 204 of the [Penal Code](#). The charge was eventually reduced to manslaughter following a plea bargain agreement. The court entered a plea of guilty on own plea in regard to the said charge of manslaughter after the court accepted the plea agreement pursuant to section 137H of the [Criminal Procedure Code](#). This was after the court was satisfied of the factual basis of the plea agreement and that the accused was competent, of sound mind, and had acted voluntarily in accordance with section 137G of the [Criminal Procedure Code](#) at the time of the agreement.
2. In terms of section 202 as read with section 205 of the [Penal Code](#) the accused, upon being convicted, is subject to serve life imprisonment.
3. Mr. Gakenia holding brief for Mr. Ojare for the Accused while submitting in mitigation on behalf of the Accused stated that the Accused accepted the plea bargain agreement and did not waste the court’s time as he admitted the offence and that he is a first offender with no criminal record. He added that the pre-sentence report dated 21st February 2024 is favourable and the probation officer has indicated that the Accused is remorseful and is suitable for a non-custodial sentence. Ms. Kariuki for the Odpp indicated that she had nothing to raise.
4. On record is a pre-sentence report dated 21st February 2024 that indicates that the convict is the son to Christopher Mwangi, a subsistence farmer, and Pauline Wamaitha, a subsistence farmer and causal labourer, who are residents of Gituamba in Nyahuru Sub – County. They live in a semi-permanent



house on a ¼ acre piece of land. The accused is the 7th born in a family of 12 siblings; Regina Wangui who is ‘married’ to the victim in this case, Stephen Gichane a farmer, Joseph Wanjiku a farmer at Boi Man, Nahashon Muriithi a casual labourer, Paul Kamau a casual labourer, Lucy Wanjiku married, Grace Nyambura married, Mary Muthoni married, Virginia Nduta married and Peter Karoki a casual labourer.

5. The family professes to Christianity. Its cohesive and supportive of one another. There was established no criminal history in the family.
6. The family spoke well of the accused and promised to support him resettle and be engaged in his rehabilitation if placed on non-custodial sentence. They pointed out that the accused has accommodation at home and that they would offer him the necessary support. They further stated that the accused had been well behaved all through save for this one incident.
7. The accused is 30 years old born in 1992. He joined Gikeno Primary school but dropped out in class 3 due to poverty. He later started to engage in casual jobs and has been in it all through. He is single and lived within his parents’ homestead.
8. The accused confessed to have been using alcohol occasionally. He has no previous criminal history. His early life was marred with poverty but his life was normal.
9. The accused admitted to have committed the offence and attributes it to having been drunk. He said that he was not his normal self-due to intoxication.
10. The Accused is remorseful and highly regrets the action and promises to shun drinking completely if he would ever be free. He acknowledged the magnitude of the offence and its effect on the victim’s family bearing in mind the victim was his brother-in-law. He begs for leniency and forgiveness and promises never to re-offend.
11. The Chief Boi Man described the Accused to have been well behaved and that he related well with other members of the community. He did not find him to be a threat to the community and neither would his life be at risk. He indicates that the Accused used to be a casual laborer and was self-dependent. He promised to keep a close watch on him if he is back in the society.
12. His neighbor also described him to have related well with other members of the community and does not find him to be a threat to the community. He further indicated that his life would not be in jeopardy.
13. The victim was 22 years old and was working as a watchman within Nyahururu Township and he cohabited with a sister to the offender. He hailed from Keroka in Kisii County.
14. The ‘wife’ has no objection to the Accused being placed on a non-custodial sentence.
15. The victim’s paternal uncle speaking on behalf of the family pointed out that the family is ready for reconciliation but raised concern that the Accused’s family had not made any attempts for the same. They felt that the reconciliation would at least help to heal the family’s emotional wounds left behind by the loss. They have surrendered to fate indicating that the victim is no more and nothing can be done to bring him back.
16. The probation officer’s findings are that the Accused is suitable for non-custodial sentence where he would be counselled on the effects of alcohol and would be empowered to stop the same and to be economically independent.



17. Under section 205 of the [Penal Code](#), manslaughter is punishable by a maximum sentence of life in prison. This is, however, the maximum penalty that is normally reserved for the most serious of such situations. This does not, in my opinion, fall into the category of the most heinous examples of manslaughter. The state has stated that the accused is a first-time offender. As a result, I've ruled out life imprisonment.
18. The written law, Case law and [Judiciary Sentencing Policy Guidelines](#) would be the starting point in determining the nature of the sentence suitable in any case, each case being mirrored on its own circumstances. In *V M K v Republic* [2015] eKLR ten years in jail was given for manslaughter. When a dangerous weapon was used in the commission of the crime, courts are more likely to sentence the offender to a stiffer sentence. It is admitted from the facts of the case that the Accused stabbed the Deceased with a kitchen knife. The Accused and the Deceased had no know previous grudge and indeed they had gone to the home of the Deceased together when a dispute over which chicken was to be slaughtered for them led to an altercation which led to this unnecessary death.
19. I have noted that the convict pleaded guilty and where a judge takes a plea of guilty into account, it is important that the convict says he or she has done so as noted in the case of *R v. Fearon* [1996] 2 Cr. App. In this case therefore I have taken into account the fact that the convict readily pleaded guilty, as one of the factors mitigating his sentence. Further, the English practice of a reduction of one third has been held to be an appropriate discount as held in the case of *R v. Buffrey* (1993) 14 Cr App R (S) 511 where the Court of Appeal in England indicated that while there was no absolute rule as to what the discount should be, as general guidance the court believed that something of the order of one-third would be an appropriate discount. In light of the convict's plea of guilty, the circumstances of the case and persuaded by the English practice, because the convict before me pleaded guilty, Life imprisonment as provided in statute would be in my view inappropriate.
20. I have considered the fact that the convict is a first offender, a relatively young man at the age of 30 years when he committed the offence. He had a good relationship with the Deceased and he acted on a spur of the moment. His history portrays him as a law abiding citizen with no history of crime. The family and the local administration speak well of him. The victim's family are also amenable to reconciliation though they are disappointed that the Accused's family has not made overtures for this.
21. It is not lost on this court that an innocent life was lost. Deterrence is an important objective of sentencing and a good guide in regulating human behavior in posterity. Incidents like the one before court must be frowned upon and this court has a duty to deter recurrence of the same. Thus, despite the glowing picture of the Accused from the probation report, am persuaded that in the circumstances of this case where a dangerous weapon was employed, a sentence of 5 years imprisonment is appropriate.
22. In accordance with section 333(2) of the [Criminal Procedure Code](#), the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. It is noted that the accused has been in custody since 21st October, 2020-. I hereby direct that the period spent in custody during the pendency of the trial be taken into account and be deducted from the term.
23. In view of the foregoing, the accused is hereby ordered to serve a sentence of 18 months imprisonment.

DATED SIGNED AND DELIVERED IN OPEN COURT THIS 29TH DAY OF FEBRUARY 2024

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A.K. NDUNG'U

JUDGE

