



**Republic v Mugambi (Criminal Case E037 of 2022)
[2024] KEHC 3782 (KLR) (20 March 2024) (Sentence)**

Neutral citation: [2024] KEHC 3782 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E037 OF 2022
EM MURIITHI, J
MARCH 20, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

ANDREW KIMATHI MUGAMBI ACCUSED

SENTENCE

1. Objectives of sentencing. The appropriate sentence in this case will be considered in the light of the [Judiciary Sentencing Policy Guidelines](#), 2023, Gazette Notice No. 11587 of 1/9/2023, which gives the objectives of sentencing, among them deterrence and rehabilitation relevant here, as shown below:

“ 1.3 Objectives of Sentencing

1.3.1 Sentences are imposed to meet the following objectives.

There will be instances in which the objectives may conflict with each other – insofar as possible, sentences imposed should be geared towards meeting the objectives in totality.

- (i) Retribution: To punish the offender for their criminal conduct in a just manner.
- (ii) Deterrence: To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.
- (iii) Rehabilitation: To enable the offender to reform from his/her criminal disposition and become a law-abiding person.



- (iv) Restorative justice: To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs.
- (v) Community protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.
- (vi) Denunciation: To clearly communicate the community's condemnation of the criminal conduct.
- (vii) Reconciliation: To mend the relationship between the offender, the victim and the community.
- (viii) Reintegration: To facilitate the re-entry of the offender into the society."

2. The offence. In this case, the accused's initial charge for murder c/s 203 as read with 204 was reduced to one of manslaughter c/s 202 as read with 205 of the [Penal Code](#) pursuant to a plea bargain agreement date 26/4/2023.
3. Facts of the case. The facts of the case, as set out in the Plea bargain agreement and admitted by the accused before his conviction for manslaughter, were as follows:

"Facts

9. The facts are that on the night of the 17th and 18th day of June 2022 between 2330hrs and 0030hrs the accused person left his house and went towards his wife's house which was adjacent to his house one Lucy Kathambi Zakayo while armed with a knife.
10. The accused person then cut the window grill of Lucy Kathambi Zakayo's house and gained entrance. When Lucy Kathambi Zakayo heard the noise of her grill being cut she thought it was a thief who had broken into her home through the window. Lucy Kathambi Zakayo then woke up and armed herself with a panga and thereafter headed to where the window had been. Lucy Kathambi Zakayo then saw that the person who was entering through her window was the accused person her husband who was armed with a knife.
11. Once the accused person got into Lucy Kathambi Zakayo's though the broken window, she asked the accused person what he wanted and he replied that he wanted his conjugal rights which he had been denied by Lucy Kathambi Zakayo and further that she was instead having affairs with other men outside of their marriage. Lucy Kathambi Zakayo replied that she had not had any affairs out of their marriage and further she had suffered stroke in the year 2012.



12. The accused person then immediately attacked Lucy Kathambi Zakayo, wrestled her to the ground, and began assaulting her. The accused person further took a piece of wood which Lucy Kathambi Zakayo had gathered to use as firewood and threatened to kill her with it. Lucy Kathambi Zakayo tried screaming for help after she heard some of her neighbours speaking at her gate but none entered to help.
13. The deceased did hear his mother Lucy Kathambi Zakayo scream and he rushed over to her house to help. Upon arrival at his mother's house he found the door locked and he called his mother and she responded. When the accused person heard the deceased he told him to return to his house. The deceased replied by telling the accused person that he did not have a problem with him and thereafter he started going back to his house. The accused person followed the deceased person.
14. Lucy Kathambi Zakayo then was left in the house alone and she decided to check for the piece of wood the accused had earlier attacked her with while in her house. Once she noted that the piece of wood was missing she sensed danger and immediately left the house to check on whether the accused person and deceased had gone back to their houses. While Lucy Kathambi Zakayo was outside she saw the accused person armed with a piece of wood standing next to the deceased and they were having a conversation.
15. A few minutes later Lucy Kathambi Zakayo saw the accused person raise the piece of wood he had in his hand and wanted to hit the deceased with the same. Lucy Kathambi Zakayo then raised an alarm. The deceased person tried to avoid being hit by stepping forward. Unfortunately the deceased was not able to evade being hit. The accused person then hit the deceased on the head and the deceased fell down on the ground in front of his house. Upon seeing what had happened Lucy Kathambi Zakayo ran away and hid herself at the corner of the deceased person's house whereby she saw the accused person leaving the deceased person lying on the ground and he returned back to his house.
16. Lucy Kathambi Zakayo then quickly went to where the deceased was and tried calming him but he never responded. She also witnesses blood oozing from the deceased person's ears. Lucy Kathambi Zakayo tried to raise the deceased from the ground and the deceased vomited. Lucy Kathambi Zakayo left the deceased on the ground and quickly rushed to the office of Chief Kimathi at around 0000hrs, however she feared to wake him up. Lucy Kathambi Zakayo then went back to where the deceased was and found that he was still lying unconscious on the ground.
17. In the morning of the 18th day of June 2022 Lucy Kathambi Zakayo called Nicolas from Kiune who supplies milk and Mike Mutuma who later went to see what had happened to the deceased.
18. Lucy Kathambi Zakayo then proceeded to Igoji police station whereby she reported the incident the deceased was washed and dressed and later escorted to Kanyakine hospital and later referred to ST Ann Mission Hospital whereby he was treated and later referred to Chuka general hospital with an ambulance.



19. On the 19th day of June 2022 Lucy Kathambi Zakayo was informed that the deceased succumbed to death due to the head injury he had suffered.
 20. Postmortem was conducted on the 5th day of July 2022 whereby the cause of death was found to be severe head injury secondary to blunt trauma.”
4. Mitigation. Upon conviction on his own plea of guilty, the accused’s counsel in mitigation urged as follows:
- “Mr. Mageria: The accused is 58 years old. He is a peasant farmer. He is the sole breadwinner. He takes care of his sickly wife. Accused is remorseful and he pleads for leniency. He is a first offender. He prays for non-custodial sentence. He has been in remand for two years. He has reformed. We pray for a non custodial sentence . He may report to local administration.”
5. DPP’s position. The DPP in response urged a custodial sentence as follows:
- “Ms. Mukangu: We pray that the court considers that the accused killed a 38 year old. He did this while in the process of assaulting his wife who he now claims to protect. The killing was senseless and it indicates that eh accused is not capable of dealing with rejection. We pray for a custodial sentence to give him time away from his family and his community and family to reflect and also be rehabilitated so that he is better able to deal with his anger issues.”
6. The circumstance of the case. The accused is a 58 year old man. The accused’s action of cutting the window to get access to his wife’s house so that he could enforce conjugal rights on the pain of assault on the wife, and subsequently fatally assaulting the son who went to respond to the mother’s screams for help, betrays a cold, calculating and vicious disposition that calls for deterrence for the benefit of the accused and other like-minded as well as rehabilitation of the accused to be able to effectively deal with anger resulting from frustrations that life constantly deals on all of us.
7. A young man lost his life by the hand of his father, the accused, for no fault other than his readiness to respond to the screams for help from his mother while being assaulted by the accused in bizarre case of sexual-and-gender-based violence.
8. The appropriate sentence in the circumstances of this case is imprisonment for ten (10) years.

Order

9. Accordingly, having convicted the accused of the offence of manslaughter c/s 202 as read with 205 of the [Penal Code](#) and having noted the accused’s pretrial detention of over two (2) years since 12/7/2022, the Court sentences the accused to serve imprisonment for ten (10) years.
 10. The sentence of imprisonment for ten (10) years shall commence, pursuant to section 333(2) of the [Criminal Procedure Code](#) from the 12/7/2022 when the accused was first remanded to await his trial.
- Order accordingly.

DATED AND DELIVERED ON THIS 20TH DAY OF MARCH, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mageria Advocate for the Accused.



Ms. Makunga, Prosecution Counsel for the State.

