



**Republic v Muthoni (Criminal Case E018 of 2022)  
[2024] KEHC 4414 (KLR) (30 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4414 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL CASE E018 OF 2022  
RM MWONGO, J  
APRIL 30, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**FAITH WANJA MUTHONI ..... ACCUSED**

**JUDGMENT**

1. The accused was charged with Murder on 2<sup>nd</sup> November, 2022. On 9<sup>th</sup> November, 2022 she pleaded not guilty to the offence. However, on 1<sup>st</sup> February, 2023 the defence proposed a Plea Bargain Agreement (PBA). The matter was given a date for PBA settlement on 9<sup>th</sup> May, 2023 to give the parties time to consider the proposal.
2. A Plea Agreement pursuant to Section 137A (i) and 137B of the *Criminal Procedure Code* was availed in court in 2<sup>nd</sup> November, 2023. The Plea Bargain Agreement dated 2<sup>nd</sup> November, 2023 was adopted by the court pursuant to Section 137G of the Criminal Procedure Code, further, the court being satisfied that the accused had understood the contents, and that she had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion.
3. The brief facts of the case as set out in the PBA are that on 21<sup>st</sup> October, 2022 at Ndindiruku village within Kirinyaga East Sub-County at about 8.30 pm the deceased arrived home and found his wife had left for overnight prayers. The young children had slept. The deceased requested the accused who lived with them to serve him food but she refused. There ensued a bitter exchange of words with the deceased calling the accused a prostitute.
4. The accused then went to the church to call his wife who returned to serve him food. He refused to eat the food and continued to insult the accused. The accused been agitated and when he approached her, she stabbed him with a kitchen knife as his wife tried to intervene. The deceased collapsed outside the house. He was later, he taken to Kimbimbi Sub-County Hospital and pronounced dead on arrival.



5. The post-mortem report dated 26<sup>th</sup> October, 2022 indicates that the deceased died due hemorrhagic shock due to massive hemothorax resulting from a penetrating chest wound.
6. The court accordingly convicted the accused for manslaughter on 2<sup>nd</sup> November, 2023. The Pre-Sentence Probation Report had been filed hence the matter proceeded for mitigation.
7. In mitigation, the defense counsel made the following submissions; That the accused was a 1<sup>st</sup> offender and remorseful for causing the death of her step-father; That she was 17 years old and had endured provocative incidents from her step-father; That her mother had forgiven her and she sought forgiveness from the victim's family; That she is willing to be rehabilitated so that she can become a productive member of the society. They she prayed for a non-custodial sentence.
8. The prosecution submitted that the accused was a minor when she committed the offence. She had been provoked by the deceased. According to the Probation Officer's Report, the two families had met and reconciled. The accused is still in school, and the prosecution do not object to a non-custodial sentence.

### **Issue**

1. Whether the sentence in the Plea Bargain Agreement should be adopted.

### **Analysis and Determination**

9. The Probation Report indicates that the accused is 18 years of age. She was brought up by a single parent at Ndindiruku Village. Her brother is in standard 8 at Wamumu Rehabilitation Centre. Her mother had sired two children with deceased. She lived in a rented house in Ndindiruku and survived on casual jobs. The accused was a form 2 student at Gategi Secondary School before her arrest for murder. Upon being granted bond, she enrolled at Clover Crest Girls School.
10. The accused stated that she did not intend to kill her step father but the same happened due to continued provocation. She tried to defend herself from his verbal attacks and menacing behaviour. He had insulted her and tried to sleep with her but she forgave him.
11. According to the Probation Report the accused is not viewed as a threat to the community and is not likely to be harmed by members of the public should he be released. The local administration did not object to her being released on a non-custodial sentence. They argued that she needed counselling to deal with her short temper.
12. The victim was 35 years and hailed from Wamunyu area of Machakos County. He was married to the accused's mother and they had sired two children. He was fostering the accused and her brother. The victim's family said that they had forgiven the accused. They were not opposed to a non-custodial sentence.
13. The Probation Report recommends the accused for a non-custodial sentence and also a Probation Order to enable her complete her education and the two families to complete the process of reconciliation.
14. The applicable law on sentence for the offence of manslaughter is found under the provisions of Section 205 of the Penal Code which reads as follows;

“ Any person who commits the felony of manslaughter is liable to imprisonment for life”



The section provides for the maximum sentence of life imprisonment; this court has taken into consideration the aggravating circumstances in that the convict murdered the victim by stabbing him with a sharp object on the chest causing him massive internal hemorrhage. She clearly has anger issues to go to the extent of using a knife to stab another human being.

15. In the Supreme Court case of *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR the courts are required to consider mitigating factors such as the following;
  - 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. The manner in which the offence was committed on the victim;
  - g. The physical and psychological effect of the offence on the victim's family;
  - h. Remorsefulness of the offender;
    - i. The possibility of reform and social re-adaptation of the offender;
  - j. Any other factor that the Court considers relevant.
15. The court has also taken into account the purposes and objectives of sentencing set out in the Judiciary Sentencing Guidelines 2010.
16. Taking into consideration all the above sentencing guidelines and the Probation Report that recommended for a non-custodial sentence, the age of the offender as a minor at the time of the offence satisfies the criteria for a reduced sentence from the maximum life imprisonment.
17. The offender was arrested on 21<sup>st</sup> October 2022, and has been held in custody for the last eighteen (18) months. This is also taken into account.

### **Disposition**

18. In the circumstances this court orders as follows:
  - a) The offender shall serve a non-custodial sentence for a period of three (3) years with effect from 30<sup>th</sup> April, 2024.
  - b) During the said period, the offender shall continue to attend school on a regular basis and without any truancy.
  - c) The offender shall attend guidance and counselling sessions organized and facilitated by the Probation Officer during school holidays; and the Probation Officer is at liberty to require the offender to engage in periods of community service.
  - d) A record of school attendance, counselling and community service shall be maintained by the respective school (s) and Probation Officer and such record may be called for by the Court at any time.



- e) Should the offender fall afoul of the law and be convicted for any offence during the period of her non-custodial sentence, she shall be brought before the court for review of the sentence herein.

19. Orders accordingly.

Dated at Kerugoya this 30<sup>th</sup> day of April 2024

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R. MWONGO

JUDGE

Delivered in the presence of:

SUBPARA 1.

Kiragu for Accused

SUBPARA 2.

Mamba for Prosecution

SUBPARA 3.

Murage, Court Assistant

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