



REPUBLIC OF KENYA



**Republic v Irungu (Criminal Case E039 of 2022)  
[2024] KEHC 4551 (KLR) (Crim) (29 April 2024) (Sentence)**

Neutral citation: [2024] KEHC 4551 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL CASE E039 OF 2022**

**LN MUTENDE, J**

**APRIL 29, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ISHMAEL MWANGI IRUNGU ..... ACCUSED**

**SENTENCE**

1. Ishmael Mwangi Irungu, the accused, was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* Cap. 63 laws of Kenya. Particulars of the offence being that on 1<sup>st</sup> June, 2022 at about 1900hrs at Rurii area within Kasarani Sub-County within Nairobi County, he murdered Rebecca Nyambura Wanjiru(Deceased)
2. At the outset the accused denied the information presented by the State but subsequently entered into a plea agreement with the State whereby he pleaded guilty to a lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code* per the agreement filed in court on 12<sup>th</sup> October, 2023.
3. Facts of the case are that the accused and deceased cohabited. On the 1<sup>st</sup> June, 2022 at about 16:00 Hrs the accused while in company of the deceased, and their son aged nine (9) years went to their home in Rurii, Kasarani and a quarrel ensued. The accused who seemed drunk was demanding Kshs 2000/ from the deceased who said she had spent the money on drinks that they had drunk.
4. The accused then picked up a metal rod from the rooftop and started hitting the deceased on the head, legs, back and hands. Thereafter he picked a knife from the table and stabbed the deceased on her legs. The deceased lay on the ground screaming begging the accused to leave her but the accused ignored and continued stabbing her back as she lay on the floor until she stopped talking.



5. Later the accused went to the bed and slept while their nine (9) year old son went out to play. He returned at 19.00Hrs and found the accused asleep while the deceased lay on the floor. Her body was cold.
6. The accused woke up at 10.00 pm touched the deceased and told the boy that his mother was dead. He asked the boy to accompany him to Githurai Police Station where they made the report. The accused alleged that the deceased father had history of epilepsy and on the fateful date he found the deceased lying on the floor.
7. The police visited the scene, processed it and recovered the murder weapon the knife that was blood stained and other relevant exhibits that were subjected to analysis at the government chemist. The autopsy conducted revealed that the deceased had six (6) stab wounds and both legs were broken. The cause of death was multiple injuries due to both blunt and sharp force trauma.
8. The accused was subjected to mental examination and found to be fit to stand trial, hence the arraignment.
9. The accused is a first offender. He stated that he was very remorseful for what happened and promised to change for good. He pleaded for a second chance and possibly for a non-custodial sentence.
10. Learned Counsel for the accused, Mr. Kihara, urged the court to take into consideration the bizarre aspect of the events that after the incident the accused fell asleep next to the deceased until 22.00 Hrs. That the accused was alcoholic but not violent and that he had changed plea to save his son, the main witness from testifying. He called upon the court to consider the relationship between the accused and his son who was clinging unto him at the time of arrest.
11. The State through Ms. Ogweno, learned Senior Prosecution Counsel submitted that the act committed was a violent and brutal way of taking somebody's life. That the nine (9) year old child who witnessed the act will live with the memories which are very bad memories.
12. The pre-sentence report filed indicates that the accused, a 32 years old man expressed remorse and regrets the offence committed. That his family is ready to support him in rehabilitation.
13. The local Chief in his rural home area could not comment on the accused conduct since he moved out of the village long time ago.
14. The secondary victim urged the court to exercise its discretion as they had forgiven the accused. The deceased mother would abide with the court decision as the daughter would not come back.
15. I have considered rival submissions. To determine an appropriate sentence I do consider the aggravating circumstances that are apparent in this particular case and also the mitigating factors.
16. It has been held now and again that a sentence imposed should be commensurate to the offence committed and also the circumstances of the case in totality. In the case of *Omuse v Republic* (2009)KLR 214, the court held that:.

“..... The sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and it was thus not proper exercise of discretion in sentencing for the Court to have failed to look at the facts and circumstances of the case in their entirety before settling for any given sentence.”



17. Proportionality is also a key principle to ensure that the offender is adequately punished, Paragraph 3.1 (f) of the [Judiciary Sentencing guidelines](#) refers to the principle of proportionality where it provides that:

“The sentence meted out must be proportionate to the offending behaviour. The punishment must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behaviour is weighted in view of the actual, foreseeable and intended impact of the offence as well as the responsibility of the offender “

18. In the case of *R v Scot* (2005) NSWCCA 152 Howie Grove and Barr JJ stated that:

“There is a fundamental and immutable principle of sentencing that this sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed in the circumstances of the crime committed...One of the purposes of punishment is to ensure that an offender is adequately punished...a further purpose of punishment is to denounce the conduct of the offender.”

19. Notably the deserved punishment should be rehabilitative. There is need to restore an offender who should undergo some lessons so as to return to his normal self.

20. Section 205 of the [Penal Code](#) provides that:

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

21. Looking at the circumstances surrounding the offence, the accused who seemed to have been agitated picked weapons and clobbered the deceased then stabbed her severally breaking her limbs. He was sane hence no explanation whatsoever would condone such an act.

22. This is a case where the accused saved judicial time by admitting the charge. Therefore, I do sentence him to 29 years imprisonment to be effective from the date of arraignment (4.7.2022)

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 29<sup>TH</sup> DAY OF APRIL, 2024**

**L. N. MUTENDE**

**JUDGE**

