



**Republic v Mwenda (Criminal Case 30 of 2019)
[2024] KEHC 4086 (KLR) (25 April 2024) (Sentence)**

Neutral citation: [2024] KEHC 4086 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 30 OF 2019
EM MURIITHI, J
APRIL 25, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

PETER MWENDA ACCUSED

SENTENCE

1. The Accused who was initially charged with murder c/s 203 as read with 204 of the *Penal Code*, was upon a plea bargain agreement convicted for a lesser charge of manslaughter contrary to section 202 as read with 205 of the *Penal Code*. The facts of the case which the accused admitted as correct were set out in the Plea Bargain Agreement, at paragraphs 9-12 thereof as follows:

“9. This is a case of murder contrary to section 203 as read with section 204 of the *penal code*. The brief circumstances surrounding this case are that on ih April, 2019 at Amukui village, Mwili sub-location, Nchooro location, Tigania West sub-county in Meru County around 4 pm, the accused returned home from Mwili market where he had been drinking. Once home, he picked a quarrel with his wife Rose Kendi (deceased).

10. The accused having been known be a character of domestic violence, he locked the main door of their house from inside and started beating the deceased using an iron bar. While doing this the accused third born son was watching helplessly through an open window as he could not be able to rescue the mother (deceased).

11. The deceased finally collapsed and could no longer scream for help. The accused later undressed the deceased torn dress and dressed her with a red skirt and sleeveless top before calling for help. The deceased was later rushed to St.



John Mission hospital in critical condition having sustained injuries on her head and neck but died on arrival. Post-mortem was carried out and the doctor opined that the cause of death was due to cardiopulmonary arrest due to manual strangulation.

12. Upon completion of investigation, the accused was arrested and charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).”

2. The Probation Officer’s report dated 22/2/2024 recommends a non-custodial sentence in conclusion as follows:

“CONCLUSION

The offender and the victim are husband and wife and were still married when the incident occurred. They reportedly related well safe for the occasional marital squabbles which were mostly alcohol induced.

The victim is a father of four children; his eldest reportedly eloped with a lover and her whereabouts are unknown while the other three are still in school and reside with their paternal grandmother. The offender was the sole bread winner in his household. Social inquiries revealed

that the offender was financially constrained even before his arrest. He worked as a casual. The offender’s family members were open and eager to have him back among them for they reported that he was a good person who related well with all of them. His is the only child who lived close to his mother hence her desire to have him back home.

The accused person does own up to the offence. He reports that he was drunk at the time of committing the offence and that he greatly regrets his actions.

The local administration does not view the offender as a threat to anyone and they do feel that tempers have cooled down; the community members who were interviewed were open to his return for most indicated that his children are suffering without him. It is’ therefore the contention of most that the death that the offender caused was accidental while others were ready to look past it for the sake of the offender’s children.

RECOMMENDATION:

From the observations drawn above it is evident that the offender has no previous criminal record and apart from the victim’s family most community members are open to his return into the community. He therefore is fit for a non-custodial sentence.

Report prepared by,

LEWIS MUTUMA KIMATHI.

PROBATION OFFICER.”

3. In the said report, the victim family’s views are, however, negative for non-custodial sentence as follows:

“THE DECEASED’S FAMILY ATTITUDE TOWARDS THE OFFENDER AND THE OFFENCE.



The deceased person family (mother and siblings) expressed their hate and dislike for the offender for the loss of one of their loved one. According to them the offender was a violent evil man who often hurt the Victim as well as threatened them when they come to her aid. The victim's mother added that the offender brazenly assaulted her for housing her daughter when the two had a falling out hence she wants him punished to full extent of the law. She feels that he is an evil man capable of anything.

The deceased person family reports that she was a very industrious person who aided in taking care of their elderly mother and her younger siblings hence her absence is greatly felt. They are further incensed by the fact that the offender's family has never got in contact with them to try and discuss the matter for they are in-laws and instead they reported that the offender's mother has been tormenting them with insults. The deceased mother strongly feels that the offender's mother has been very insensitive to their loss for instance the offender's family buried her daughter without involving her and her family.”

4. The victim impact statement dated 22/2/2024 indicates the circumstances of the killing as follows:

“Conclusion

Your honour, the offender before the honourable court is a 36 year old man, the victim was his wife. Together they have four children. The offence was committed in 2019 at Amukui village.

The offender's family is open to his release for they claim that he is a good man who did not intend to cause harm to his wife (deceased). They report that his children have been suffering for the offender has been in custody since his arrest back in 2019. They are pleading for leniency during sentencing.

The deceased at the time of her passing had a young family of four children who were still in primary school. Currently her eldest daughter fled from home and her whereabouts are unknown. The other three children who are under the care of paternal grandmother still attend school but social inquiry revealed that they do live a very difficult life worse than when they had both their parents. Their behaviour and mannerism has been negatively affected due to lack of parental supervision and proper role models.

The deceased family reported that that there were no attempts to reconciliation made and that they currently were not for it since it would not bring back their loved one. They report that despite the offender's and victim's family being in laws they were not in good terms with each blaming the other for being insensitive to their plight.

The deceased's and the offender's family live in close proximity to each other hence in case he is released contact with the victim's family is inevitable. If the offender is imprisoned his children will have difficult futures for their guardian (grandmother) is hands off kind of person and an alcohol brewer hence she is a bad role model. The deceased family on the other hand claims that they are financially constrained to take up the children and that the offender's mother is also not for that.”

5. The report recorded the impact on the secondary victims as follows:

“(b) Impact Statement on psychological and emotional harm

The secondary victims specifically the deceased mother and her sisters are bitter and feel that their life's would have been better had the deceased been around.



They claim that she was very industrious and aided in their education as well as taking care of their mother.

The deceased had a young family with all the children in school and it has been an uphill task for the paternal grandmother to raise them for they report that she is an alcohol brewer and a bad role model. They therefore feel that the deceased children life has got worse since their mother died. In fact her first born daughter whereabouts are unknown.

The deceased mother further added that the offender's mother has been a source of emotional torture to her for she has been ridiculing her for the arrest of her son. She even buried the victim's body in her land without even consulting them and took guardianship of the deceased children.”

6. Consequently, the Counsel for the DPP urged that the recommendations by the Probation Officer in the Pre-sentence report and Impact statement were not backed by the facts of the case as set out in the reports, pointing out that “there is a stark contrast in the recommendation against the views of the victim’s family”.
7. Counsel for the Accused urged that the accused was remorseful; he has been in custody for five years since 17/4/2019 ad he has reformed during this time; he is 36 years, married with 4 children 3 of whom are school going and they are under the care of their grandmother. He pleads for a non-custodial sentence pointing out that the Presentence report and the victim impact statement are positive for non-custodial sentence.
8. Upon considering the mitigating factors of the case, among them, the youthful age of the accused, his responsibility as the surviving parent of his children with the deceased who are presently living with his mother and the aggravating circumstances of the killing of the deceased by strangulation in the presence and plain sight of the children (not that it helps if the killing was discreet), and the accused seeking to cover up the crime by changing the deceased’s dress, the Court finds the accused to have calculated to harm the deceased but pretended to have had nothing to do with the deceased injury.
9. The aggravating factors outweigh the mitigating factors and the Court considers that a custodial sentence is necessary for deterrence, and especially rehabilitation of the accused by prison discipline.
10. The court considers an imprisonment term of ten (10) years to meet the circumstances of the case. The accused who has been in pre-trial detention of five (5) years since remand on 17/4/2019 will be up for release at a youthful age when he is still able to meaningfully contribute to the provision for his remaining family and the development of his society at large.

Orders

11. Accordingly, for the reasons set out above, having convicted the accused on his own plea of guilty for the offence of manslaughter contrary to section 202 as read with 205 of the [Penal Code](#), the Court now sentences the accused to imprisonment for ten(10) years.
12. The said sentence of imprisonment for ten (10) years shall commence on 17/4/2019 when the accused was first remanded to await his trial.

Order accordingly.

DATED AND DELIVERED THIS 25TH DAY OF APRIL, 2024.

EDWARD M. MURIITHI



JUDGE

Appearances

Mr. Masila for DPP.

Mr. Igweta for the Accused.

