



Republic v Mwai (Criminal Case 8 of 2020) [2024] KEHC 6028 (KLR) (28 May 2024) (Sentence)

Neutral citation: [2024] KEHC 6028 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 8 OF 2020
RM MWONGO, J
MAY 28, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

MARY WAMBUI MWAI ACCUSED

SENTENCE

1. The accused was charged with the murder of Nathan Mwai Njogu on 18th February, 2018. On 3rd February, 2020 she pleaded not guilty to the offence. On 7th November, 2023 the defence proposed a plea bargain agreement. The matter was given a date for Plea Bargain Agreement (PBA) settlement on 29th January, 2024 to give the parties time to consider the proposal.
2. On 29th January, 2024, the parties availed the signed Plea Agreement of even date, pursuant to Section 137A (i) and 137B of the *Criminal Procedure Code*. The PBA was adopted by the court pursuant to Section 137G of the *Criminal Procedure Code*. Further, the court indicated it was satisfied that the accused had understood the contents of the PBA and that she had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion.
3. The court thereby convicted the accused for manslaughter on 29th January, 2024. The Pre-Sentence Probation Report had been filed hence the matter was set for mitigation on 7th March, 2024.
4. The brief facts of the case are that on 18th February, 2018 at Mbiri town at about 8.00 pm revelers were taking their drinks at Quick Service Bar. At about 10.00 pm, the bar owner, Bernard Karuri Muchiri, ordered the revelers out since it was showing time was running out. He saw a group of people arguing, among them the accused, Mary Wambui Mwai, and the deceased. The main quarrel was between the deceased and Elias Nyaga, who were fighting over a phone. The accused held the deceased, who was drunk, by his shirt collar and pushed him to the ground in defence. He fell on a stone and got injured. He was taken to Embu level five hospital and died on arrival. The post-mortem report dated 20th February, 2018 indicate that he died due to depressed skull fracture secondary to blunt force trauma.



5. In mitigation the defence counsel made the following submissions. That the accused was a 1st offender; she was remorseful for the incident and prayed for a lenient sentence; She is a mother of three children who depend on her; She is an orphan and she also lost her son in 2022 through an accident; She was diagnosed with depression as the present case was ongoing; She is accommodated by her brothers and sisters. She seeks a non-custodial sentence. Further, the probation report is favourable, and hence she prays for a non-custodial sentence.
6. The prosecution submitted that; The accused ran away after the incident and was arrested after two years; She did not care for her children when she went into hiding; There is no evidence of her rehabilitation. The state seeks for a custodial sentence of 15 years imprisonment to enable her gain skills and be rehabilitated.
7. The only issue before me is what sentence should be meted by the court in this Plea Bargain Agreement.

Analysis and Determination

8. The Probation Report indicates that the accused is 45 years. Her parents are deceased, and she is the seventh born in a family of eleven children. All her siblings are now independent. She dropped out of school in class two due to illness. She married the deceased and were blessed with three children, is a marriage of 20 years. Thus, had constant fights with the deceased who was an alcoholic.
9. The accused told the Probation Officer that she was in an abusive relationship with the deceased leading them to separate. Unfortunately, even after separation, the deceased would go after her and use abusive language whenever they crossed path.
10. 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. Her children are in need of support hence she should be considered for a non-custodial sentence. The victim's family harbour no grudge towards her and are ready to offer any support required for her successful reintegration into the society.
11. The Probation Report recommended the accused for a non-custodial sentence and recommends Community Service Orders at Njukiini North Chief's office for a period of three (3) years.
12. 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”
13. The section provides for the maximum sentence of life imprisonment. This court has taken into consideration the aggravating and mitigating circumstances in that the convict murdered the victim by pushing him to the ground where he fell on a stone and fractured his skull. This occurred during a fight when they were drunk.
14. The supreme Court decision in the case of *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR directed that the following mitigating circumstances should be considered before sentencing.

In sentencing the court will 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.

Disposition

15. I have taken into consideration the above sentencing guidelines the Judiciary Sentencing Guidelines the Probation Report, that recommended for a non-custodial sentence and the mitigating and aggravating circumstances. I have also taken into consideration the time the offender has spent in remand custody. The accused in my view satisfies the criteria for a reduced sentence from the maximum life imprisonment.
16. Given all the foregoing, I hereby sentence the offender to imprisonment for a term of six (6) years to take into account any time spent in remand custody. The sentence shall be served as follows:
- a. The first one year shall be spent in prison custody.
 - b. The balance of the term, taking into account remission, shall be spent carrying out a non-custodial sentence performing community service at Njuki-ini North Chief's Office under the supervision of the Chief.
 - c. During her non-custodial sentence term, the accused shall also attend counselling on anger management under a programme designed and facilitated by the Probation Officer.
17. Order accordingly.

DATED AT KERUGOYA THIS 28TH DAY OF MAY, 2024

R. MWONGO

JUDGE

Delivered in the presence of:

- 1. Mary Wambui Mwai Accused in person
- 2. Igati for the Accused
- 3. Mamba for the State
- 4. Murage, Court Assistant

