



**Republic v Ngonde (Criminal Case 6 of 2019)
[2024] KEHC 6035 (KLR) (27 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 6035 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 6 OF 2019
RM MWONGO, J
MAY 27, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

SIMON MUNENE NGONDE ACCUSED

SENTENCE

1. The accused is charged with the murder, on 2nd August 2016, in Raimu village, of Patrick Gitari Nyaga.
2. Initially when arraigned, the accused pleaded not guilty on 8.4.2019. the hearing commenced and prosecution witness Nancy Wambui Gitari testified.
3. On 12.10.2023 Pre-Bargain Agreement (PBA) negotiations were commenced and an agreement was signed on 2nd November 2023, and availed in court. The accused was taken through his constitutional rights as set out in Section 137 F of the *Criminal Procedure Code* and he agreed he understood what he was doing and what his rights were.
4. Accordingly, the court, being satisfied that the accused was acting voluntarily and was not under any incapacity, adopted the PBA dated 2nd November 2023 and convicted the accused with the offence of Manslaughter. A Probation Report was ordered.
5. On 31st January 2024 the accused gave his mitigation and the Probation Officers Report dated 18.1.2024 was produced in court.
6. The PBA indicates the facts as follows. On 2nd August 2016, the Accused engaged in a fierce confrontation with the deceased, his brother-in-law. The dispute was about a phone memory card. Suddenly, the accused entered the house and emerged with a sharp iron rod with which he stabbed the deceased twice.



7. On 3rd August 2014 he passed on at Kerugoya hospital where he had been admitted. The accused ran away from the scene and was not seen until 2019 when he was arrested.
8. The Post Mortem report indicates that the deceased; death was caused by cardiopulmonary arrest due to chest injury resulting from assault (a sharp object).
9. In mitigation the offender stated that he was remorseful; that he had undergone several programmes in prison including religious courses and one on making beads. The defence stated that he was a father of one child who was deserted by the mother and is now living with the aunt. He also seeks that should he be issued a sentence term in prison the same should take into account Section 333(2) of the *Criminal Procedure Code*.
10. The state pointed out that the deceased was the accused's brother-in-law, that the manner of stabbing was gruesome particularly given that there had been no provocation and the accused ran away from the scene. The state added that there was no evidence of rehabilitation, and proposed a sentence of ten (10) years, as opposed to the offender's proposal of non - custodial sentence.
11. The Probation Officers Report gives the personal and family background of the offender. The offender stated that he regrets the incident; and thus, pleads for leniency.
12. The community members are still bitter towards the offender as he had a bad record of criminal activities. The local administration feels that if the offender is released on a non -custodial sentence he may abscond, and since the family no longer own any land in the area, tracing the offender would be a difficult task.
13. The victims relative could not be traced for interview. The Probation Officer notes that the offender lacks family support on account of the family unit having broken down totally. The offender had escaped police arrest earlier and the Probation Officer fears he is a flight risk, hence not suitable for a non-custodial sentence.
14. I have considered the *Judiciary Sentencing Policy Guidelines*, and taken into account the nature of the offence, the conduct of the accused after committing the offence and the time spent in custody. The state proposed 10 years imprisonment and the defence proposed a non-custodial sentence.
15. I think this is a case of custodial sentence. The offender's sentence to eight (8) years imprisonment. Such sentence to commence from the date of his first incarceration in custody.
16. Orders accordingly.
17. File closed.

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R. MWONGO

JUDGE

27.5.2024

