



**Republic v Mugambi (Criminal Case 75 of 2019)
[2024] KEHC 16120 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16120 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 75 OF 2019
EM MURIITHI, J
DECEMBER 19, 2024**

BETWEEN

REPUBLIC PROTESTOR

AND

MARK MUGAMBI ACCUSED

RULING

1. The accused was convicted on his own plea of guilty for manslaughter contrary to section 202 as read with 205 of the Penal Code following a plea bargain agreement dated 1/10/2024 reducing the initial charge of murder contrary to section 203 as read with 204 of the Penal Code.
2. The facts of the case, which the accused admitted are set out in the Plea-bargain Agreement are as follows:

“FACTS

9. Had the case gone for trial, the prosecution would have presented evidence sufficient to prove the following facts beyond a reasonable doubt.
10. The brief circumstances surrounding this offence is that Mark Mugambi (hereinafter the accused person) got married five years ago to Nancy Kagwiria Kiogora D-I who is a key witness in this case.
11. The accused sired two children with Nancy Kagwiria Kiogora D-I and they separated when she was expecting their second child together. Since she was now single and pregnant, she desperately needed a father figure in her one rented room situated at Kithoka trading centre.
12. Nancy Kagwiria Kiogora D-I opted to start an intimate relationship with Peter Koome (hereinafter the deceased person). The accused who was staying with



his friend in a neighbouring rental house heard rumours that Nancy Kagwiria Kiogora D-1 was having an affair with the deceased.

13. On the material day, of 25th January, 2019 at, about 0030 hours the accused I proceeded to Nancy Kagwiria Kiogora D-1 rented room while armed with a long stick and upon opening the door, she was attacked by him. In the process of struggling, she sustained a cut on her finger with the knife in which the accused was now holding. The deceased was seated in the room watching what was unfolding.
 14. The neighbours woke up and told the accused that he should teach the deceased a lesson for interfering in this marriage With Nancy Kagwiria Kiogora D-1.
 15. While Nancy Kagwiria Kiogora D-1 was still on the floor, the deceased opened the door to rush out however he did not manage as the accused stabbed him on his back with the knife. Later the accused escaped to an unknown destination.
 16. Nancy Kagwiria Kiogora D-1 on seeing the flow of blood oozing out from the deceased body shouted for assistance. Anthony Mwenda Mbaabu D-2, Newton Muthomi D-3, Peter Kirinya D-4, Eurither Mwari D-5, Joseph Kimanthi D-6 and Boniface Mwenda M'ikigu D-8 all came and assisted in ferrying the deceased to Meru Level 5 Hospital. The deceased was admitted at the said hospital and at about 0900 hours he was pronounced dead.
 17. Nancy Kagwiria Kiogora D-1 reported the incident at Meru Police Station.
 18. On 31st January, 2019 a post-mortem was conducted on the body of the deceased where in the opinion of the doctor the cause of death was severe haemorrhage due to intraabdominal bleeding due to severed spine.
 19. On 6th October, 2019 the accused was apprehended at Maua area in Igembe Sub-County, Gatheru village in his hideout.
 20. That it is in light of the aforementioned that the accused pleads to the lesser charge of manslaughter contrary to Section. 202 as read. with Section 205 of the Penal Code.”
3. Counsel for the Accused in mitigation urged the Court to adopt the Probation Officer’s Report pointing to the youthful age of the accused and his breadwinner role for his very poor family. The DPP urged that although the accused had been in custody for five years, rehabilitation truly starts upon the sentence of imprisonment on conviction and not while the accused was on remand, and pointed out that the Probation Officer’s report is not binding on the Court.
 4. The Probation Officer by report dated 13/11/2024 recommended Probation sentence, emphasizing on the youthful age of the offender, as follows:

“CONCLUSION

The offender is twenty seven years old and comes from Usuweni area in Kitui County. However, he ran away from home at a young age and came to Mew where he worked as a herd’s boy. He reconnected with his family when he was an adult with a wife and child. The offender pleads for the courts leniency and regrets using violence to solve his marital problems.



Community members at Kithoka area and local administration described the offender positively saying he was a responsible family man who faced marital challenges which he had tried to solve by use of chief and elders. The victim's family is totally opposed to a on-custodial sentence saying the offender never apologized to them and since he does not come from Meru tracing him might be difficult if granted a on-custodial sentence.

In our opinion the offender seems to be a responsible young man who committed the offence due to rage that was stirred up when he found his wife in a compromising situation in his own house. Social enquiries that were conducted did not reveal any violent tendencies associated with the offender other than the offence facing him in court.

RECOMMENDATION

Your Lordship the offender before court seems remorseful and pleads for leniency of the court. He has been described positively by community members at his place of residence before arrest.

The offender's family in Tseikuru sub-county is ready to welcome him back home and assist in his rehabilitation. In view of the above findings, we are of the opinion that the offender may be considered for a on-custodial sentence and recommend a Probation sentence.

Isika E. M.

PROBATION OFFICER.

MERU.

13TH NOVEMBER 2024”

5. Admittedly, the youthfulness of an offender is a consideration which supports the possibility of reform, rehabilitation and re-integration. There is time for the reformation of the offender with opportunity for him to be reintegrated into his society.
6. The cause of death was certified in the Post-mortem report as “sever hemorrhage secondary to intra-abdominal bleeding secondary to severed Spleen” clearly the result of the stabbing as admitted by the Accused. The accused, however, stabbed the deceased in a fit of anger when he learnt that estranged his wife was having an affair with the deceased and with the incitement of neighbours who nudged him to discipline the deceased for interfering with his marriage. This fact of lack of premeditation does diminish his responsibility as his initial intention appeared to have been to chastise his wife, which though a crime, is not indicative of any intention to kill or cause grievous harm on the deceased.
7. However, objectionable, the antecedents to the incident leading to the death of deceased did not disclose a premeditation to kill the deceased.
8. The Court does, however, agree with the Prosecution that the case calls for a deterrent sentence to discourage the now rising cases of gender-based violence, which manifests in assault on women which sometimes, as in this case, escalates to the murder of women and or their friends as the deceased in this case, and, generally, the spectre of marital violence. A probation sentence, as recommended by the Probation Officer, may while not affording the offender an opportunity to be rehabilitated also send the wrong message that it is okay to assault one’s spouse or estranged spouse and their friends in so-called love triangles! A sentence of imprisonment is warranted.
9. The Court notes that the offender has been in pre-trial detention awaiting his trial since 14/10/2019 and in terms of section 333 (2) of the Criminal Procedure Code, the Court will take into account the period of five (5) years of pretrial detention in passing the sentence of imprisonment.



10. The Court considers a further period of about two (2) years of actual prison custody will avail the offender time for instruction on peaceable civilized living under the law and instillation of social discipline during the imprisonment, such as will reform and rehabilitate him into a better person for his society. A sentence of imprisonment for 10 years reckoned from the date of arraignment in Court will meet the justice of the Case.

Orders

11. Accordingly, for the reasons set out above, the Court having convicted the accused for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code now sentences him to imprisonment for ten (10) years.
12. The sentence of imprisonment for ten (10) years shall commence on 14/10/2019 when the accused was first arraigned in Court to await his trial.

Order accordingly.

DATED AND DELIVERED ON THIS 19TH DAY OF DECEMBER 2024.

EDWARD M. MURIITHI

JUDGE

Appearances

Mr. Masila, Prosecution Counsel.

Mr. Ng'entu for the Accused.

