

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
HCCR E032 OF 2024

REPUBLIC.....

PROSECUTOR

VERSUS

DERRICK MULE MBITHI.....ACCUSED

SENTENCING

1. The accused was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that on the 12th December 2024 at Kinyui village, Matungulu Sub County within Machakos County, he murdered Elizabeth Kamene Mulonzi.
2. Later on, Plea Bargain was undertaken culminating into a Plea Bargain Agreement being entered into whereupon the charge of murder was reduced to that of manslaughter.
3. Upon being satisfied that the accused understood the contents of the plea bargain agreement and that he was willing to proceed with it voluntarily without promise of benefit of any kind and without threats, force, intimidation or coercion, the court adopted the plea bargain agreement.

4. The accused was now called to plead to the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The facts as read out by the Prosecuting Counsel are as follows: that on 12th December 2024 at about 8.30am, the deceased, Elizabeth Kamene Mulonzi was asleep beside her 9 months old baby within the family's house. She was staying with her own mother and sister. The accused stormed into the house. Being visibly angry, he proceeded to the spot where the deceased was sleeping with the baby, pushed the baby away and began to punch the deceased on the body. The deceased's mother and sister tried to intervene by pulling the deceased away. At that point, the accused drew a knife from his pocket and stabbed the deceased on the right side of the neck and the back and fled the scene.
5. The deceased, who was bleeding profusely, was rushed to Kinyui Bonny Care Clinic where she received first aid and was referred to Kangundo Level 4 Hospital. She succumbed soon after admission at Kangundo Level 4 Hospital. The accused surrendered himself to Kinuyi Police Station, where he reported that he had stabbed his girlfriend on suspicion of infidelity. He surrendered the knife and was booked in at the police station.
6. The Prosecution continued that on 13th December 2024, the post-mortem was conducted by Dr Brian Mbuvi and the Report revealed that the cause of death was injuries suspected to be stabbed wounds with massive haematoma and severe anaemia consistent with assault.

The Prosecuting Counsel produced the Post Mortem Report as Exhibit 1 and the knife surrendered to the police as 'Exhibit 2'.

7. When called to respond to the facts as read by the prosecution, the accused stated that the facts as narrated were correct. The Court proceeded to convict him on his own plea of 'Guilty' for the offence of Manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#).
8. Having been so convicted, parties were called upon to address the Court in mitigation before sentencing. Counsel for the accused submitted that the accused has demonstrated remorsefulness and has engaged the deceased family with a view of settling the matter. He relied on the joint agreement between the Aombe Nthoka Clan and Atwii Nthunzu Clan officials on compensation of the murder of Kamene Ngina Kaule which provided the terms of settlements in accordance with the Kamba customary laws. He also stated that the accused is 29 years, has a bright future, has a young child who has now been left with her grandmother, being the deceased's mother. He urged the Court to rely on the **Muruatetu** decision and grant an unconditional release to the accused to enable him raise the child. Further that the circumstances were as a result of anger and that he is willing to work on anger management. He also emphasized that the community is willing to welcome him back.

9. Counsel urged the Court to grant a non-custodial sentence so as to promote ADR as envisaged in the constitution and to promote the reconciliation between the families.
10. The prosecution counsel submitted that the accused was a first offender and associated with the accused counsel submissions. She informed Court that several meetings had been held by the families and that she would not be objecting to the submissions made for the accused to be unconditionally released or granted a non-custodial sentence.
11. The deceased's mother was personally present in Court and she informed Court that she had forgiven the accused and that the Court should grant him a second chance to raise his child like a father. She urged the Court to sympathise with the accused since she had been compensated and that the accused be released unconditionally.
12. A pre-sentencing report was also filed by the probation officers recommending that the accused is suitable a probation sentence subject to the Court's discretion.
13. The applicable law on sentencing for the offence of manslaughter is found under the provisions of Section 205 of the [Penal Code](#) which provides that: "Any person who commits the felony of manslaughter is liable to imprisonment for life"

14. In determining the appropriate sentence in this matter, I have made reference to the Judiciary Sentencing Guideline Policy, as well as the Supreme Court decision in the case of **Francis Karioko Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2021] eKLR** where the apex Court set out factors for consideration in sentencing and which include age of the offender, whether she/he is a first offender, plea of guilty, character and record of the offender, commission of the offence, remorsefulness of offender and the possibility of reform and social re-adoption of the offender.
15. In this case a young life was tragically lost, and a child has been deprived of the opportunity to be raised by his mother. The prosecution's presentation of the facts clearly outlines the aggravating circumstances of the offence. The accused went to the victim's own mother's home where the deceased was with her mother and sister and her infant, a 9months old, child. He pushed the baby away from the mother and started punching the deceased. This Court notes that the 9 months old child was literally pushed away from her mother's comfort, not to feel it ever again! Despite efforts by the deceased's mother and sister to restrained him, he proceeded to pull out a knife and stabbed the deceased before fleeing the scene.
16. These actions demonstrate a high level of aggression and disregard for human life. The circumstances are so aggravating and smacks of an act of femicide which this

Court and society will not condone. In determining this case, I am well guided by this Court's decision in **Republic v Chelimo (Criminal Case 65 of 2020) [2024] KEHC 1630 (KLR) (23 February 2024) (Sentence)** where in almost similar circumstances, the court rendered itself as follows:

“The charge of manslaughter as premised in Section 205 of the Penal Code prescribes a maximum sentence of life imprisonment. In electing various determinants to arrive at a fair and just sentence I have in mind factors relating to the interests of society. What does that mean? It is to look at the public in relation to the commission of this particular crime as well as their subsequent expectations on a sentence which answers to the issues surrounding such a crime. In my considered view the interests of society have several features. First at the forefront society is in need of protection from the offender like the convict before this court and they would be offenders out their harboring intentions to strike victims who are commonly refereed as gender based violence. Secondly, femicide in Kenya is on the rise and threatens the very fabric of our society. Thirdly, crimes as this one though a plea of guilty has been entered by the convict the

nature of the sentence to be imposed should be such that it would send a warning to potential offender or crime planners. In addition, in weighing one factor or another, the objectives of punishment namely retribution, deterrence, incapacitation and rehabilitation are to be measured alongside aggravating and mitigatory factors. So when considering the imposition, the court must not impose a sentence of imprisonment unless it is satisfied that:

a. A sentence is being imposed for all or any of the statutory purposes of sentencing and

b. Those purposes cannot be achieved by a sentence other than imprisonment and

c. No other sentence would be consistent with the application of the principle of sentencing.

4. May be there is a higher starting point within the context of the present sentencing framework in domestic homicide cases.

Women comprise the majority of victims in domestic killings within our society. Their voices within the home based environment are silenced by virtue of sustaining their marriages and relationships. They also find access to justice protocols laborious and sometimes traumatic. There is also the issue of

traditional beliefs and culture which acts as a restraint to accuse one's spouse for an offence to be processed through the criminal justice system. Take for example the case in point one cannot ignore a breach of trust as between the convict and the deceased. As an integral part of the gender based violence which occurred on the material day."

17. I have carefully, considered the mitigating factors presented on behalf of the accused. These include the fact that the accused family has engaged in reconciliatory efforts with the victims' family; acceptance of the plea bargain, thereby saving judicial time and resources; the relatively young age of the accused and the fact that he is a first offender. I have also considered the victim's mother wishes; as well as the contents of the probation report.
18. Despite the probation report recommending a non-custodial sentence, this Court notes that the sentence must reflect the gravity and nature of the offence committed. A life was lost and someone must take responsibility for. While the two families may have reconciled, the only party that can speak for the deceased is this Court. The Court must ensure that the deceased's death does not go unpunished. The Court must also make it clear that acts of femicide are punished and not suppressed by society.

19. Consequently, I find that a non-custodial sentence is not appropriate in this case. Ordinarily, such an offence would have warranted a life imprisonment. However, in light of the mitigating factors outlined above weighed against the aggravating facts equally stated above, I will exercise discretion and sentence him to 7 years imprisonment. Time spent in custody that is the period from 30/12/2024 to 16/4/2025 and the period from 24/9/2025 to date to be taken into account in accordance with section 333(3) of the Criminal Procedure Code.

20. Orders accordingly.

Signed, dated and delivered at Machakos this 20th day of November, 2025.

RHODA RUTTO
JUDGE

In the presence of;

Accused person

ODPP

Selina Court assistant