



**Republic v Rotich (Criminal Case E004 of 2023)
[2024] KEHC 11408 (KLR) (27 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11408 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E004 OF 2023
RB NGETICH, J
SEPTEMBER 27, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

KELVIN KIPKORIR ROTICH ACCUSED

RULING

1. The accused Kelvin Kipkorir Rotich had been charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code. The particulars of the charge were that the accused person on the 1st day of March,2023 at Kurumbopsoo sub-location, Kapropita Location in Baringo Central Sub-County within Baringo County murdered Daniel Rotich.
2. The accused denied the charge but, on the 29th March,2023 when the matter came up for hearing, the defence counsel Mr. Mwaita informed the court that he wished to pursue plea bargain. The matter was fixed for mention on the 25th April,2023 to confirm the position on plea bargain.
3. After reconciliation between parties, plea agreement was duly executed on the 13th February, 2024 where the charge was reduced to manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#). He pleaded guilty and he was convicted on his own plea of guilty.

Brief Facts Of The Case

4. on the night of 27th February, 2023, the subject herein Kelvin Kipkorir Rotich went to the neighbor’s house and started waking them up. The subject’s mother Cecilia Rerimoi was called and upon inquiring from the subject why he was disturbing neighbor’s, he turned on his mother and hit her on the head with a stick prompting her to flee from the scene.
5. The following day, the matter was reported by the neighbors to the Area Assistant Chief who together with the Chief interrogated the subject. The subject told them that he not only wanted to wake the



neighbours but he also wanted to burn their houses. The two warned the subject not to repeat the mistake and left.

6. On 1st March, 2023, at around 0030hrs police officers responded to the distress call from Kurumbopsoo sub-location within Baringo central Sub- County. The scene was at the homestead of Mr. and Mrs. Daniel Rotich. on arrival, the officers quickly established that the accused herein had set fire on his father's grass thatched house after locking him inside the house and also locked his mother's room so that she could not rescue his father. By the time the officers arrived at the scene, the house was fully razed down. The subject herein had been arrested by members of the public who saw the subject upon hearing screams. At this point his father had been rushed to Baringo County Referral Hospital.
7. The police placed the subject into custody and proceeded to Baringo County Referral Hospital to confirm the state of his father who was in critical condition. The father eventually succumbed to injuries at 2000Hrs while undergoing treatment. The deceased had sustained 38% first degree burns on his body. upon interrogation by the police, the subject admitted to committing the offence.
8. Postmortem was conducted on the body of the deceased at Baringo County referral Hospital on the 9th of March,2023 by Dr. Wangari Wambugu who formed the opinion that the cause of the death was due to laryngeal oedema that blocked air entry into the lungs secondary to inhalation injury from the burn. The police file was compiled and the accused charged with the offence of murder now reduced to manslaughter following plea bargain.

Presentence Report

9. Presentence report filed revealed that the subject is 17 years old. After sitting for KCPE examination in the year 2022 the subject obtained 141 marks out of 500 but he did not proceed to secondary school. He begun to engage in casual labor. Social inquiry reveal that the juvenile began exhibiting deviant behavior in the year 2019 when he started involving himself with negative peers who influenced him to start the use of alcohol and drugs. Eventually, the use of drugs led to mental issues and members of his family developed fear towards him. He is single. Mental assessment revealed that the subject suffers from schizophrenia.
10. The juvenile prays for forgiveness from the court and states that he has requested his family to forgive him. He says his father the deceased herein used to take him to hospital and was given medicine to take daily but on the material day, he had had not taken his medication resulting in him not being in control of his faculties and thus he committed the offence.
11. The mother of the subject expressed fear towards the subject stating that he had previously tried to burn down his grandfather's house but luckily, the grandfather was not present. She says the family fear that the subject may harm them if released. The brother added that the subject started by rudeness which graduated to violence and it reached a point he could not be controlled. He added that at one point the subject assaulted his mother but as a family, they forgave him. He says they fear for their safety if the subject is released. From a family meeting held on the 18th of December,2023, it is clear that the family is not ready to accept the juvenile back home.
12. The area assistant chief indicated the subject has been violent in character within the community but it has always been dealt with locally until when he committed the current offence. He indicated that the community was shocked by the actions of the subject with many members of the community now living in fear of the subject. He confirmed that the family is not willing to accept the subject back and the community is hostile towards him and releasing him will be putting the safety and life of the subject at risk.



13. In view of the fact that the subject suffers from Schizophrenia and the family are not ready to accept him back, the probation officer recommends that he be committed to a suitable institution where the subject will get proper treatment for his condition, subject to the discretion of this court.

Mitigation

14. The defence counsel Mr. Chepngoswo who was holding brief for Mr. Mwaita mitigated on his behalf. He submitted that the subject person is aged 17 years old with high prospects in life, is remorseful and he is a first offender. He submitted that at the time of commission of the offence, the subject was suffering from schizophrenia. That he is a class eight drop and is seeking forgiveness. He attributes the offence to alcoholism and drug abuse and given a chance, he will ask for forgiveness from his family members. He submits that the subject had no grudge with his father who is the deceased herein and he did not intend to kill his father.
15. The prosecution counsel Ms. Ratemo submits that a second mental assessment done confirmed that the accused has schizophrenia and members of his family are not ready to accept him back. She submits that his mother expressed fear stating that he had attempted to burn down his grandfather's house and his brother stated that the subject has been violent and they fear if released, the community may be hostile towards him. She submits that from the minutes attached the family clearly stated that they are not ready to accept the subject back and they recommended approved school and owing to the circumstances of this case, she prayed for the subject to be taken for treatment. Counsel prayed that a second report be filed indicating the facility the subject can be committed.
16. On the 11th July, 2024, the matter was mentioned to confirm whether the probation officer had found a place where the subject can be committed. On the same day, prosecution counsel urged this court to sentence the subject as an adult and cited the case of Kisumu Appeal No.52 of 2015 Duncan Okello Ojwang v Republic where the court took into consideration the fact that the accused had committed the offence as a child and at the time of sentencing, he could not be admitted in a juvenile facility. She submits that the court relied on JK v Republic where the subject had committed the offence of murder while aged 16 years old.
17. The prosecution counsel submit that the subject herein killed his father by setting him on fire and locking the mother's room so that she could not save his father and watched as the house burnt. That those are aggravating circumstances and the community is not willing to accept him back. She prayed that the accused be sentenced as an adult. Further that the accused having been diagnosed with schizophrenia, he can be treated while in custody.

Determination

18. Under section 205 of the Penal Code a person convicted of Manslaughter is liable to imprisonment for life, however the court in Malindi Criminal Appeal No. 12 of 2021 between Julius Kitsao Manyeso v Republic declared life imprisonment unconstitutional.
19. From presentence report and mental assessment done, the subject suffers from schizophrenia. He requires medication and close supervision. The family are however not ready to welcome him back home for fear of being harmed by the subject. There is no doubt that the medical condition coupled with drug abuse may have driven the subject to commit the heinous act against his father who he said used to take him for treatment. Without support from his family on treatment, the subject is likely to relapse and commit offences again therefore endangering himself and those around him.



20. The prosecution counsel argued that in view of the fact that there is no facility available to commit the accused, he be sentenced as an adult. From the presentence report, the subject is aged 17 years old and therefore a minor. It is not also disputed that he suffers from schizophrenia and from the report, he also engaged in alcohol and drugs which worsened his condition making him violent and engaged in acts which endangered lives of people around him and eventually mercilessly took away the life of his father who burned to death in his house which the accused locked before burning.
21. I have considered prosecution's prayer to sentence the subject as an adult as the family are not willing to accept and assist him with treatment. I also take note of the fact that at the time of committing the offence, he had the mind of a child and is still a child aged 17 years and he should be treated as a child while sentencing. In view of the above and taking into consideration the fact that Schizophrenia is a lifelong mental condition, I am of the view that it will be in the interest of justice to commit the accused in a mental facility for treatment. Review to be done at a later date to determine whether he can be placed on probation.
22. Final Orders:
1. The subject is hereby committed to Mathare teaching and referral Hospital for treatment
 2. Mention after 6 months for the court to determine if he is suitable for non-custodial sentence and or for further directions

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 27TH DAY OF SEPTEMBER 2024.

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RACHEL NGETICH
JUDGE

In the presence of:

CA Elvis.

Ms. Barasa H/B for Mr. Mwaita counsel for the Subject.

Ms. Ratemo for state.

Subject present.

