



**Republic v KC (Criminal Case E006 of 2023)
[2024] KEHC 11276 (KLR) (26 September 2024) (Sentence)**

Neutral citation: [2024] KEHC 11276 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E006 OF 2023
RB NGETICH, J
SEPTEMBER 26, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

KC ACCUSED

SENTENCE

1. The accused KC 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 4th day of April,2023 at [Particulars Withheld] in Baringo Central Sub- County within Baringo County murdered VKK
2. The accused denied the charge and the matter was fixed for hearing but on 9th October,2023 when the prosecution counsel Ms. Ratemo informed the court that the defence had made a request for plea bargain and she had communicated the request to the family of the deceased. On 8th February, 2024, the prosecution counsel informed the court that they had received minutes from the victim’s family and the state would proceed to prepare a plea agreement reducing the charged to manslaughter contrary to section 202 as read with section 205 of the penal code and plea was taken on the 13th February,2024. The accused pleaded guilty to the offence of manslaughter and was convicted on his own plea of guilty.

Brief Facts Of The Case

3. Facts surrounding this case are that on the 4th day of April 2023, at around 2000hrs JTC while in the company of her children after taking their supper when they heard people talking outside their compound. She opened the door and confirmed that those who were conversing outside were his son VKK the deceased herein and his cousin KC the subject herein.



4. J heard her son, V asking for refund of kshs 200 which he had given the son for work but failed to work as agreed. The deceased was asked to go and get the one from the subject's house. shortly after, J heard the subject's mother remark, "kata huyu kijana, anakuja nini kwako usiku"; then she heard a sound of a panga cutting iron sheet. She went out to check what was happening and found her son VKK lying in a pool of blood in front of the subject's doorstep. She entered the subject's house and saw the suspect with a blood-stained. She managed to snatch the panga from the accused. She then informed her husband RKR who was sleeping in their house about the incident at the subject's compound. Her husband hurriedly went to the scene where he confirmed their son had been killed and was lying in a pool of blood with blood oozing from a cut wound on the head. Jenifer later handed over the panga to the police.
5. The deceased's father reported the incident to the assistant chief who in turn reported to the police. Police officers from DCI visited the scene, collected the panga and moved the body to Baringo County Referral mortuary awaiting post mortem.
6. Post-mortem was conducted on the body of the deceased at Baringo County Referral hospital on the 12th of April, 2023 by Dr. Barmogon who formed the opinion that the cause of death was due to massive hemorrhage secondary to traumatic/penetrating head trauma, Traumatic brain injury.
7. The police file was compiled and the accused charged with the offence of murder now reduced to manslaughter upon request for plea bargain.

Mitigation

8. The defence counsel Mr. Kipkulei mitigated on behalf of the accused. He submitted that the accused was 17 years old at the time of the offence and he is apologetic to the court and to the family. He submitted that the deceased was the accused's first cousin and he regret having caused the death of his cousin whom they were friends and neighbors and blames the deceased for provoking him leading him to react out of heat of passion.
9. Counsel submitted that after causing the death of the deceased, the accused send his father to seek forgiveness and there were negotiations but the demands from the deceased's family could not be met by the accused's father. He submitted that the accused regrets the offence and seeks forgiveness having learnt a lot from his stay in custody; he prays for a second chance to be allowed to join the society so that he can start building the nation. He stated that the accused was in standard 8 when he committed the offence and his wish is to go back to school and further his studies. He prays for lenient sentence.
10. . The prosecution counsel Ms. Ratemo submitted that the accused committed a serious offence which led to the loss of life of a person aged below 18 years. She submitted that she agrees that the accused was a minor at the time he committed the offence but that is not the position now and urged this court to sentence him as an adult as he cannot now be sentenced to any juvenile facility as he has attained the age of 18 years. She submitted that the victim's family is still bitter and urged this court to impose a deterrent sentence.

Presentence Report

11. From the report, the subject's parents indicate the subject was born in the year 2005 and is therefore 19 years now though the age assessment report indicate he is 17 years old. He dropped out of school and started engaging in casual jobs. His parents had approached the family of the victim to seek forgiveness and they agreed that they would give the family of the victim a piece of land as compensation but the family of the victim refused the land offered and demanded a piece of land nearer to the home.



- However social inquiry reveal that the family of the victim refused the land initially as there were no proper documentation. The subject's family have not offered any alternative land. Despite this, the subject's family pray for a non-custodial sentence on behalf of the subject.
12. The subject prays for forgiveness from the court and the family of the victim and states that while in remand, he has had a chance to reflect on his actions and he now wants to go back to school so that he can seriously pursue his education.
 13. The victim's parents stated that the victim was 21 years old at the time of his demise. The victim had worked as a security guard in Meru before coming back home where he was working in a quarry. The victim was not married and he did not have any children. The family states that they feel the vacuum left by the deceased having been a first-born child and supported his family from his income.
 14. The victim's family confirm that efforts to reconcile have been unsuccessfully as the land offered by the victim's family is far and has no title deed yet the victim's family had land which is nearby. In their view, the victim's family are not serious in pursuing reconciliation and the matter should be settled in court. They prayed for a custodial sentence.
 15. The local administration confirmed that meetings were held between the two families and elders but the reconciliation efforts collapsed after the family of the subject failed to offer alternative land or alternative compensation after the victim's family refused the land offered by subject's family. They stated that at some point the family of the subject stopped cooperating with the elders in terms of reconciliation. They described the subject as being a troublesome person within the community with previous cases of theft which were resolved through Alternative Dispute Resolution (ADR). In view of failed reconciliation, the local administration propose custodial sentence so as to avoid chances of retaliation due to the bitter way in which the reconciliation process collapsed. The local admiration indicated the subject is over 18 years.
 16. The headteacher of Kasore primary school stated that as per their school records, the last time the subject was in school was in 2021 and that he dropped out of school in grade 6 and not grade 8. He stated that efforts made to return the subject to school proved futile. The parents of the subject pray for leniency on behalf of the subject but do not commit themselves towards reconciliation with the family of the victim.
 17. From the report, efforts to have the subject's parents provide a birth certificate were futile although by word of mouth they indicated that the subject is above 18 and was born in 2005 February. The probation officer recommends that the subject be committed to an institution upon confirmation of a vacancy subject to court's discretion.

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 vs Republic* declared life imprisonment unconstitutional.
19. I have considered the fact that the subject is a first offender. I have also considered mitigation through defence counsel and sentiments from the both victim's and subject's family, local administration and recommendation by the probation officer.
20. It is clear that efforts to reconcile the family of the victim and family of the subject proved futile on account of failure to agree on compensation. This has left bitterness between the two families which will make community-based rehabilitation difficult and pose danger to safety of the subject. As recommendation by the probation officer, I am of the view that the subject be committed to an



institution. The probation officer indicate that the subject is aged 19 years as indicated by the parents who informed her that the subject was born in the year 2005 but did not avail any documents to confirm the date or year of birth. I however note that a second age assessment was done in July 2024 and the report indicate that the subject is between 16 and 17 years in brackets likely 17 years. In view of the fact that no birth certificate or any other document was availed in court, I adopt the second age assessment done by a doctor on 17th July 2024 and filed in court as the age of the subject herein.

21. Final Orders:

1. The subject is hereby committed to shikuza borstal institute for a period of 3 years.
2. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET THIS 26TH DAY OF SEPTEMBER 2024.

RACHEL NGETICH

JUDGE

In the presence of:

Elvis/Beatrice – Court Assistant.

Ms. Ratemo for state.

Accused present.

Mr. Kipkulei for Accused.

