



**Republic v Mikalo alias Babu (Criminal Case E019 of 2022)
[2024] KEHC 11221 (KLR) (26 September 2024) (Sentence)**

Neutral citation: [2024] KEHC 11221 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E019 OF 2022
SC CHIRCHIR, J
SEPTEMBER 26, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN MIKALO ALIAS BABU ACCUSED

SENTENCE

1. The Accused herein was charged with two counts of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. Following a plea bargain, the charges were reduced to Manslaughter and the Accused pleaded guilty to the lesser charges.

Accused’s submissions

3. Through his Advocate Mr. Kombwayo, he submits that having pleaded guilty and having been in custody since arrest, he is deserving of a non-custodial sentence.
4. He argues against any imposition of a mandatory sentence stating that, such as sentence will defeat the whole purpose of mitigation.
5. The counsel then sets out the objectives of punishment and urged the court to strike a balance between the interest of the complainant, the accused and the ends of justice.
6. The Accused further submits that the circumstances of the offence shows that he was acting on self-defence and he is remorseful.
7. It is further submitted that the accused is a young man on 30 years, which age is a productive one .



Prosecutor's Submissions

8. On behalf of the state, Ms. Osoro urged the court to take into account the fact that two lives were lost; that the two were in the course of duty, that is trying to effect arrest of the Accused, who had been suspected of theft.
9. She further points out that indeed the Accused was resisting arrest when he attacked the deceased persons. It is further argued that there was no justification for the taking away the two lives.
10. The social inquiry report shows that the Accused abuses and trades in " Marijuana" (illicit drug). It is also reported that, he has been previously in possession of drugs, and at some point, he had been sentenced to a probation period of 18 months. It is noted however that the evidence of such sentence has not been provided, and the prosecution's submission was silent on whether the accused is a repeat offender.
11. The circumstances of the offence, as per the investigation of the probation officer tally with the facts as presented in the plea bargain agreement. The Accused however told the probation officer that his intention was to scare off, and not kill, the deceased persons.
12. According to the local Administration, the Accused is known to always move around with a knife and engages in frequent altercation with people. He was frequently involved in cases of Assaults, theft and is engaged in the sale of illicit drugs . He is seen as a security risk to the community.
13. I have considered the parties' submissions and the social inquiry report
14. Remorse and being a first offender are mitigating factors. Pleading guilty at the earliest date possible is also a Mitigating factor.
15. However, I disagree with his Advocates submission that being in a productive age should be seen as a mitigating factor
16. I have also considered the circumstances of the offence. Although the Accused says he was trying to scare away the deceased persons, it is obvious that the intention was not just that.
17. One of the deceased persons, Johnstone Mukwano suffered 2 stab wounds on the left side of the chest measuring 3.5 x 1 cm. One of the wounds led to the collapse of the lungs. It was evident therefore that the stabbing was aimed at the heart. If the intention was to disarm the "attacker", as the accused alleges, why was the knife aimed at the heart; and what was the need of 2 stabbed wounds. The 2nd victim Jackson Ashimeto Masheti, also suffered a wound measuring 8 x 4 on the chest Area.
18. From the above findings, I am not persuaded by the Accused's Mitigation that he was simply trying to scare the deceased persons so as to allow him to escape.
19. The counsel's submissions that the Accused was acting in self- defence is also negated by the facts as presented in the plea- bargain agreement. The deceased's persons were not attacking the Accused , they were village officials who wanted to effect arrest.
20. In the circumstances of this case am persuaded that the aggravating factors outweigh the mitigating ones.
21. Taking into consideration all the foregoing, I hereby sentence the Accused to 20 years in prison, on each count. The sentences will run concurrently, and to be treated to have taken effect from 18/5/2022 being the date when the Accused was first arraigned in court.



22. Right of Appeal:- 14 days

DATED, SIGNED AND DELIVERED AT KAKAMEGA, THIS 26TH DAY OF SEPTEMBER 2024.

S. CHIRCHIR

JUDGE.

In Presence of:-

Godwin Luyundi- Court Assistant

The Accused

Ms. Osoro for DPP

Mr. Kombwayo for the Accused.

