



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kinoti (Criminal Case 30 of 2017)
[2023] KEHC 410 (KLR) (30 January 2023) (Sentence)**

Neutral citation: [2023] KEHC 410 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 30 OF 2017
EM MURIITHI, J
JANUARY 30, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

RAPHAEL MUNENE KINOTI ACCUSED

SENTENCE

Conviction

1. The accused, initially charged with murder contrary to section 203 as read with 204 of the *Penal Code*, was by a plea bargain agreement dated December 19, 2022 herein charged for the lesser offence of manslaughter contrary to section 202 as read with 205 of the *Penal Code* and, upon the plea of guilty, convicted for the said offence, the sentence whereof is the subject of this ruling.
2. The court has considered the mitigation by the defence and the Probation Officer's pre-sentence report, which recommends probation sentence in the case and the prosecution's submission for custodial sentence.

Mitigation

3. The 31 year old man is said to be a first offender and it is urged by the Probation Officer and the accused's counsel that the circumstances of the killing was at drunken spree which was shown as the accused's stamen to the Probation Officer when the deceased indicated as having attacked the accused and others at a drink party hosted by one Kaai, the deceased's son, in fit of anger over the demand for piece of land by the said son, and the accused had taken "a stick and in self defence hit him on the head and [he] died."



4. This version of events, which is relied on by the Probation Officer and the defence counsel is different from the facts of the case as pleaded to and accepted by the accused in the plea bargain agreement and before the court at the plea taking.

Facts of the Case

5. The facts of the case as set out in the plea bargain agreement, and which were at plea taking accepted by the accused as true leading to the conviction for the offence of manslaughter are as follows:

“Facts

9. The facts are that on the October 18, 2016 at around 2.00 am Florence Kanyire Andrew and the deceased person who was her husband one Andrew Karigi Yohana were asleep in their house. Florence Kanyire Andrew was sleeping in a different room adjacent to another room which Andrew Karigi Yohana was sleeping.
10. Florence Kanyire Andrew was then awakened by a sound which she later realized was from the gate leading to her home compound which was being broken into. Florence Kanyire Andrew did also hear people talking and she managed to identify the voices to be that of her grandsons by the names Raphael Munene Kinoti the accused person, Phenias Bundi and Brian Kimathi who were all sons of the deceased person's nephew James Kinoti who had died a long time ago. The accused persons together with Phenias Bundi and Brian Kimathi were complaining that the deceased person had refused to give them consent in order to dispose a parcel of land they wanted to sell.
11. After a few minutes Florence Kanyire Andrew heard a huge bang at the outer door of the house which leads to the sitting room. Florence Kanyire Andrew then opened her bedroom door and this is when she realized that the accused person together with his two brothers were already in the house after breaking the outer door. The accused person was armed with a metal bar where as Phenias Bundi and Brian Kimathi were armed with clubs.
12. Florence Kanyire Andrew being the accused person's grandmother pleaded with the accused person and his two brothers not to attack the deceased person but the accused person together with Phenias Bundi and Brian Kimathi went on ahead and broke into the deceased person's room. After the accused person and his two brothers gained entry into the deceased person's room they started assaulting the deceased person using the metal bar and clubs they had been armed with. Florence Kanyire Andrew started screaming for help.
13. While the accused and his two brother were assaulting the deceased, he got a chance to escape and ran into his banana plantation where the accused person and the other two assailants caught up with him and cornered him.
14. Jennifer Ngugi Kennedy while asleep in her house she did hear the deceased calling out to her for help and she quickly left her house and went to where the deceased was being beaten. Jennifer Ngugi Kennedy found the accused person armed with a metal bar and two other assailants armed with clubs beating the deceased person. she also did see the accused and the two assailants chase the



deceased upto his banana plantation where they cornered him and continued to beat the deceased.

15. Jennifer Ngugi Kennedy tried to separate the accused persons and the two assailants from the deceased and also tried pleading with them to leave the deceased but the accused and the two assailants insisted that they wanted to kill the deceased on that fateful day and swore that he would spend the night in the mortuary. Once the accused and the two assailants realized that the deceased was dead they ran away.
16. Jennifer Ngugi Kennedy then decided to go to the deceased's son's house one Julius Muthuri Karigi and informed him about the incident. Jennifer Ngugi Kennedy accompanied Julius Muthuri Karigi to the scene where the accused and two assailants attacked the deceased. When Jennifer Ngugi Kennedy and Julius Muthuri Karigi got to the scene they found the body of the deceased to be lying in a pool of blood and the same was lifeless.
17. Julius Muthuri Karigi then went and reported the matter at Mitunguu police station. After a few minutes the police arrived at the crime scene and took the body of the deceased person to Meru teaching and referral hospital mortuary.
18. The postmortem was conducted on the October 20, 2016 whereby upon external appearance the head had a deep cut wound right frontal region 5cm in length, bruises on the left cheek and left temporal region. The right hand had a deep cut wound on the palm. The legs had a cut wound, superficial left leg around the knee region. The cause of death was found to be traumatic brain injury following assault.
19. The accused person was then arraigned before court and charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#) which after entering into a plea agreement the charge was reduced to that of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#).”

The sentence

6. The sentence must be based on the facts of the case as admitted by the accused person in the plea bargain agreement and at plea, and not as recorded in the Probation Officer's presentence report. The court considers that a deterrent sentence is warranted to punish and discourage the offender and others in the prevalent offence of killing, with or without malice aforethought, even in the circumstances of drunken stupor which may reduce the level of responsibility, regard being given to the accused's drunkenness while committing the offence, which was not disproved by the prosecution but rather accepted as evidenced in the offer to plea bargain.
7. The court accepts that in sentencing the accused for the offence of manslaughter which carries a maximum penalty of imprisonment for life, credit and consideration must be given to the accused as a first offender who has pleaded guilty to the lesser offence of manslaughter and whose responsibility for the offence may have been diminished by the alcoholic drink taken at the time of the killing. The court will also take into account the youthfulness of the offender at 31 years with prospects of reformation and rehabilitation as well as his provider role for his young family.



8. The court considers an imprisonment term for seven years to meet the circumstances and justice of this case taking into account the interests reformation of the accused, the need to assuage the victim's family and his community, as well as public interest in deterrence of serious crimes of murder and manslaughter.
9. The sentence of imprisonment for seven (7) years shall take into account the period of pre-trial detention of the accused awaiting his trial, in terms of section 333(2) of the *Criminal Procedure Code*. The accused was arraigned before the court on April 19, 2017; released on bail on January 30, 2018; and subsequently remanded upon his conviction on December 19, 2022. The accused has been in custody for a period of about 11 months.
10. The court considers an imprisonment for the net period of six (6) years one (1) month after deducting the pre-trial detention period, will allow the offender to be released after about four years of custody in prison service where he shall undergo penal reformation activities, discipline and training. Release at the age of 35, as he should be on completion of sentence, has the offender still young enough for rehabilitation into the society for meaningful contribution thereto and to take up his father and provider roles for his family.

Orders

11. Accordingly, for the reasons set out above, the court having convicted the accused on his own plea of guilty for the offence of manslaughter contrary to section 202 as read with 205 of the *Penal Code* sentences him to an imprisonment term of seven (7) years which shall take into account the period of eleven (11) months of pre-trial detention as aforesaid.

Order accordingly.

DATED AND DELIVERED ON THIS 30TH DAY OF JANUARY, 2023.

EDWARD M. MURIITHI

JUDGE

Appearances

Ms. B. Nandwa Prosecution Counsel for the DPP.

Mr. Mutuma, J., Advocate for the Accused.

