



**Republic v Chumba (Criminal Case E080 of 2021)
[2023] KEHC 387 (KLR) (25 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 387 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
CRIMINAL CASE E080 OF 2021
RN NYAKUNDI, J
JANUARY 25, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

GEDION KIPLIMO CHUMBA ACCUSED

JUDGMENT

- 1 The accused, Gedion Kiplimo Chumba, was 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 on the June 18, 2021 at Sirwa village, Kapchorwa location in Nandi County he unlawfully caused the death of Hillary Kiplimo Tabut.
- 2 When the accused was arraigned for Plea taking on July 28, 2021 before Hon Justice SM Githinji, he pleaded not guilty to the offence. The Court then entered a plea of not guilty.
- 3 On November 24, 2022, when the matter came up for hearing, Ms. Asiyo, Prosecution Counsel informed Court that parties had successfully concluded the Plea Agreement along with an amended information. Counsel prayed that the Plea Agreement be adopted by Court. When the accused person was asked by Court if he had entered into the said Plea Agreement, the accused person confirmed that he had entered into the said Plea Agreement on his own free will and that he understood the terms of the Plea Agreement.
- 4 The Plea Agreement dated November 24, 2022 was then adopted by Court and the prosecution agreed to reduce the charge from murder to the lesser offence of manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#).
- 5 The above charge of Manslaughter was read over to the accused person in the Kiswahili language and he admitted the charge of manslaughter by unlawful killing of the deceased subject of the plea-bargained charge of manslaughter. Facts of the case were also read out and recorded by the Court and interpreted



- to the accused in Kiswahili language and he admitted the facts to be correct. The Court then entered an unequivocal plea of guilty to the charge of manslaughter and convicted him accordingly.
- 6 The facts as admitted by the accused person are that on the night of June 18, 2021, at around 8:00pm, the accused person who is a brother to the deceased, was engaged in a heated argument with their mother about the accused person's extra marital affairs.
- 7 Upon hearing the loud exchange of words, the deceased herein, mistook the same for a violent confrontation and proceeded to the accused person's house to hand the matter. When the deceased arrived at Gedion's house, he started a quarrel with the accused where after he picked an axe in attempt to cut the accused on the head but the deceased was blocked by his two brothers; Stephen Kimeli and Kennedy Kibet who intervened to prevent the assault on the accused.
- 8 The deceased put down the axe, however, a scuffle ensued between the two who could no longer be contained by the rest of the family members, the two fell on the ground and it was at this point that the accused grabbed a knife from the utensils in the houses and stabbed the deceased once on the left side of the lower abdomen thereby fatally wounding him. The deceased died on the spot.
- 9 The accused fled the scene of the incident but later surrendered himself to the police when the matter was reported at Nandi police station.
- 10 A post-mortem was conducted on the deceased which revealed that the cause of death was haemorrhagic shock after a cut wound through the left common artery secondary to assault which was consistent with the injuries sustained by the deceased. Prosecution proposed a sentence of (5) years in view of the circumstances surrounding the death of the deceased.

Determination

- 11 In exercising discretion to impose an appropriate sentence in capital offence like murder, manslaughter and Robbery with Violence, there are relevant considerations as expounded in *Francis Muruatetu v Republic* 2017 Eklr in which the court has to factor in its final determination have in mind the need to have regard to:
1. Type and gravity of the murder
 2. Mental state- including a degree of diminished responsibility
 3. Other partial excuses including an element of provocation or undue influence
 4. Lack of premeditation
 5. Character
 6. Remorse
 7. Capacity for reform and continuing dangerousness
 8. View of the victim's family
 9. Delay up until time of sentence and prison condition
 10. Guilty pleas
 11. Prison conditions
- 12 I have considered the facts of the case as presented by the Prosecution Counsel Ms Asiyo, and the exhibit produced, the fact that the accused person has pleaded guilty unequivocally to those facts which



disclose an offence. I have also taken into account the fact that the accused is a first offender and the mitigation presented by his Counsel Ms. Kogo.

- 13 The accused person was engaged in a quarrel with his mother regarding his extra marital affairs when his brother the deceased mistook the quarrel for a violent confrontation. The deceased picked a quarrel with the accused person. It is unfortunate that the said quarrel then escalated into a fight that lead to the untimely demise of the deceased. The deceased died in due to a stab wound to his stomach that caused excessive bleeding. The accused did not have a premeditated intention of killing the deceased, albeit the act of killing the deceased was unlawful and wrongful.
- 14 It is worth noting that the Court on several occasions requested for a pre-sentence report in this matter, however the probation department failed to avail one in time. A pre-sentence report is a product of a social inquiry or investigation 'is a process of generating data and information on a specific subject matter or an offender for the purpose of documenting and understanding the attendant causes of behaviour and events. Pre-sentence reports provide advisory information to the courts with a view to the court making sentencing verdicts, including decisions on alternative measures to imprisonment.
- 15 Be as it may, punishment for manslaughter under Section 205 of the Penal Code provides for a maximum sentence of life imprisonment. However, considering the fact that the accused has pleaded guilty to the lesser charge of manslaughter, the circumstances under which this offence was committed, the age of the accused, mitigation and taking into account the objects and guidelines in our sentencing policy 2016
- 16 I hereby exercise discretion and sentence the accused person, Gedion Kiplimo Chumba to serve Five (3) years imprisonment. The three years' imprisonment with effect from June 28, 2021 to give credit for the period spent in remand custody.
- 17 It is so ordered. Leave to appeal within 14 (fourteen) days from today's date.

DATED, SIGNED AND DELIVERED AT KAPSABET THIS 25th DAY OF JANUARY 2023

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R. NYAKUNDI
JUDGE

KAPSABET CRIMINAL CASE NO E080 OF 2021	0
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