



**Republic v Mutai (Criminal Case E001 of 2021)
[2023] KEHC 1178 (KLR) (24 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1178 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE E001 OF 2021
RL KORIR, J
FEBRUARY 24, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

MATHEW KIPLANG'AT MUTAI ALIAS CHEPELION ACCUSED

JUDGMENT

1. Mathew Kiplang'at Mutai was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal code*. The particulars of the offence were that on the 25th day of December 2020 at Mosoricho village in Tergat location within Bomet county unlawfully killed Bernard Kiplang'at Kirui.
2. The accused took plea before this court on January 26, 2021 and denied the charge. The matter proceeded to trial with the prosecution calling the first witness, PW1 Mercy Sigei who testified that she was present when the accused stabbed the deceased.
3. On November 23, 2021, the parties told the court that they wished to plea bargain the charges. The court accepted the request and adjourned the matter. On November 24, 2021, defence Counsel, Ms Chepkemoi informed the court that they had executed and filed a plea agreement.
4. The court accepted the plea agreement after it interviewed the accused and satisfied itself that he understood the plea bargaining process and had voluntarily entered into and executed the plea agreement. The prosecution proceeded to fashion a new charge *vide* Information dated March 21, 2021 and charged the accused with the lesser offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. The particulars being that on the 21st day of October 2019 at Koita village within Bomet East Sub-County unlawfully killed Peter Kiplang'at Rotich.



5. The accused took plea on March 21, 2022 and pleaded guilty to the charge. The prosecution presented facts as follows: -

“The facts are that the accused was with his brothers, one Emmanuel Ng’eno and Isaiah Ng’eno in the house of one Janet Maina, a neighbour who had invited them for christmas celebrations with other guests. The house was in Mosoricho village. Bomet sub-county. While in the said house, they took traditional brew named chang’aa. A fight ensued between the accused’s brothers Isaiah Ng’eno and Frankline Ngeno. While they fought, the liquor was spilt on the feet of the accused who got irritated and joined in the fight. At the time, all the guests were drunk. The accused stepped out and on his way out, he met with the deceased whom he stabbed and fled off with the murder weapon. The guests rushed the deceased to Tergat dispensary. He died on the way. His body was moved to Longisa Hospital. The accused was then arrested on December 26, 2020. The charge of murder was preferred on January 4, 2021. Subsequently, both the defence and the prosecution entered a plea agreement, now executed and filed in court. The said agreement has been accepted by the court hence the lesser charge of manslaughter.”

6. The accused admitted that the facts were true and was convicted of the offence of manslaughter on his own plea of guilty. The court then directed that a pre-sentence report be filed. The pre-sentence report dated April 4, 2022 was filed on May 10, 2022.
7. During the sentencing hearing on October 6, 2022, defence counsel Ms Chirchir submitted that the accused was remorseful and regretted his actions. That he pleaded guilty to the offence and saved the court precious time. She also submitted that the accused was a young person and had been in custody since 2020, that the victim’s family had forgiven him and that the offence was not premeditated. She prayed for leniency In sentencing.
8. On his part, prosecution counsel Mr Njeru submitted that the accused was a first offender. He however urged that the court should consider the fact that a life was lost and therefore a custodial sentence would be appropriate under the circumstances, even if the court exercised leniency in so sentencing.
9. Sentencing is an important part of the Judicial process and serves multiple objectives as summarized in *The Judiciary Sentencing Policy Guidelines* [2014] as follows:-

- (1) Retribution: to punish the offender for his/her criminal conduct in a just manner.
- (2) Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
- (3) Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
- (4) Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
- (5) Community protection: to protect the community by incapacitating the offender.
- (6) Denunciation: to communicate the community’s condemnation of the criminal conduct.



10. In the case of *S v Scott Crossley* 2008 (1) SACR 223 (SCA at para 35 the court set out the objectives of sentencing thus:-

“Plainly any sentence imposed must have deterrent and retributive force. But of course one must not sacrifice an accused person on the altar of deterrence. Whilst deterrence and retribution are legitimate elements of punishments, they are not the only ones, or for that matter, even the over-riding ones.”

11. In considering appropriate sentences, the courts are expected to consider several factors. These factors were amplified by Ngugi J (as he then was) In *Benson Ochieng & Another v Republic* [2018] eKLR as follows: -

“Rephrasing the sentencing guidelines, there are four sets of factors a court looks at in determining the appropriate custodial sentence after determining the correct entry point (which, as stated above, I have determined to be fifteen years imprisonment). These are the following:

- a. Circumstances surrounding the commission of the offence.....
- b. Circumstances surrounding the offender: The factors here include the following:
 - i) The criminal history of the offender: being a first offender is a mitigating factor;
 - ii) The remorse of the applicant as expressed at the time of conviction;
 - iii) The remorse of the applicant presently;
 - iv) Demonstrable evidence that the applicant has reformed while in prison;
 - v) Demonstrable capacity for rehabilitation;
 - vi) Potential for re-integration with the community;
 - vii) The personal situation of the offender including the applicant’s family situation; health; disability; or mental illness or impaired function of the mind.
- c. Circumstances surrounding the victim: The factors to be considered here include:
 - i. The impact of the offence on the victims (if known or knowable);
 - ii. Whether the victim got injured, and if so the extent of the injury;
 - iii. Whether there were serious psychological effects on the victim;
 - iv. The views of the victim(s) regarding the appropriate sentence;
 - v. Whether the victim was a member of a vulnerable group such as children; women; Persons with disabilities; or the elderly;



- vi. Whether the victim was targeted because of the special public service they offer or their position in the public service; and
- vii. Whether there been a commitment on the part of the offender (applicant) to repair the harm as evidenced through reconciliation, restitution or genuine attempts to reach out to the victims of the crime.”

12. In this case the accused has already been convicted of manslaughter. Sentencing is an important part of the criminal judicial process. The punishment for the offence of manslaughter is premised under section 205 of the *Penal Code* cap 63 Laws of Kenya as follows:-

“ Any person who commits the felony of manslaughter is liable to imprisonment for life.”

I am however guided by the principles above to consider any aggravating or mitigation circumstances before sentencing.

13. This court appreciates the gravity of the offence committed by the accused which resulted in the death of another, it is imperative that due consideration is made towards the circumstances of this case. Indeed, in *Gedion Kenga Maita v Republic*, Criminal Appeal No 35 of 1997 (UR), the court stated thus:-

‘...We are not saying that a court has no power to impose a sentence of life: a court can do so depending on the circumstances of a particular case which circumstances must include the circumstances under which the offence itself was committed, the circumstances of the accused person such as whether he is a first offender, how long he has been in prison awaiting trial and things of that nature.’

14. In the present case, the facts demonstrate that both the deceased, the accused and the accused persons brothers were all on a drinking spree. When the fight ensued, the accused ended up stabbing the victim who later succumbed to his injuries. From the facts there was no suggestion that the accused planned or prepared to attack the deceased. It seems more to the court that he acted in drunken stupor.

15. I have taken into consideration the probation report and more particularly, the victim impact statement. I have also taken into account the submissions made on behalf of the accused to the effect that he was remorseful. At the same time, I have considered the fact that the two families were yet to engage in a reconciliation process owing to the fact that the members of the accused’s family who would participate in the process have long since died. Lastly, I have also considered the accused’s plea for a non-custodial sentence.

16. The duty of this court is to determine an appropriate sentence for the crime committed by the accused. Even though it was apparent that he was remorseful, this court appreciates that the life of a young man in his prime years was lost. At the same time, I have taken note of the accused’s age that he was in his early 20’s and has been in pre-trial custody for one year. He has also saved this court precious judicial time by plea bargaining and has expressed remorse.

17. I have come to the conclusion that a non-custodial sentence was not appropriate in the circumstances of this case. First, there was no meaningful reconciliation between the accused and the victims, and secondly; it has not been demonstrated that there were any structures for supervision or community willingness to aid in his reintegration.



18. The accused is hereby sentenced to serve 9 years imprisonment. In arriving at this sentence, I have considered the time already spent in pre-trial custody as required by section 333(2) of the *Criminal Procedure Code*.
19. The sentence shall run from March 21, 2021 being the date that the accused was charged and committed to pre-trial custody.
20. Orders accordingly.

JUDGMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 24TH DAY OF FEBRUARY, 2023

.....

R. LAGAT-KORIR

JUDGE

Judgment delivered in open court in the presence of the accused, Mr.Kenduiwo holding brief Ms. Chepkemoi for the accused, Mr. Njeru for the State and Siele (Court Assistant)

