



**Republic v Adike (Criminal Case 4 of 2018) [2023] KEHC 3509 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3509 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE 4 OF 2018  
RB NGETICH, J  
APRIL 27, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JUSTUS ADIKE ..... ACCUSED**

**RULING**

1. The accused person had been charged with an offence of murder contrary to section 203 and 204 of the *Penal Code*. Particulars of the charge being that the accused on the night of 17<sup>th</sup> and 18<sup>th</sup> February, 2018, at Kampi Turkana village, Perkerra Sub-location in Baringo South Sub-County within Baringo County, murdered Zakayo Nangole Kimoda.
2. The accused pleaded not guilty to the charge. Three prosecution witnesses testified in court and on 25.01.2023 the court directed parties to explore plea bargain and 21.12.22 Mr. Chepkilot counsel for the accused informed the court that the plea bargain agreement was ready. The prosecution agreed to reduce the charge to manslaughter on condition that the accused pleads guilty to the lesser.
3. On the 21.12.2022 the charge of manslaughter was register following a plea bargain agreement executed on 19.12.2022 and upon charge and its full particulars being read to the accused, he pleaded guilty and was found guilty and convicted of the charge of manslaughter as provided under section 202 as read with section 205 of the *Penal code*.
4. The brief facts surrounding the offence is that on the 17.02.2017 at night, the deceased forced himself into the house of the accused in his absence and tried to force her wife to have sex with him at about 2000hrs; a struggle ensued between the two where she was beaten up and only rescued while running away to the hide out. The accused returned to the house shortly and his wife informed him how the deceased had come to the house to beat and attempted to have forced sex with her, the accused went outside the house without telling her where he went and he returned the following day on the 18<sup>th</sup> February, 2018.



5. Upon return, the accused's wife noticed that the T-shirt and the jean trouser the accused wore the previous night had blood stains. She suspected that her husband must have had a fight with someone. According to neighbors, the deceased did not have enemies within the village except for the love triangle involving him and the accused wife.
6. On the 23<sup>rd</sup> February, 2023 the court directed the probation officer to prepare pre-sentence report and the report was filed on 21<sup>st</sup> February, 2023.
7. From presentence report, the community gave a positive image of the offender stating he has lived faultless life. They acknowledged that no reconciliatory talks had taken place between the two families and seem to be apprehensive of the safety of the offender should he be released into the open society at the moment; there was no information forthcoming from the deceased family who have relocated and hence could not be reached for comments on the report. The accused wife is eagerly awaiting her re-union with her husband. She also confirmed that no reconciliation has taken place between them and the deceased's family.
8. The probation officer recommends that given the absence of reconciliation and in the interest of the safety of the accused, a non-custodial sentence would not be suitable.
9. The Prosecution stated that the accused may be treated as a first offender as there were no previous records.
10. The defence counsel Mr. Chepkilot mitigated on behalf of the accused. He submitted that the accused is remorseful of his actions and regrets the action; that he is 34 years old with a family and he prays for a chance to go back to the society. He urged court to impose a non-custodial sentence and stated that he wished to reconcile with the family of the deceased but he has been in custody.

### **Analysis And Determination**

11. Under section 205 of the *penal code* a person convicted of Manslaughter is liable to imprisonment for life. Record show that the accused committed the offence out of passion/ a crime of passion, owing to the deceased's sexual advances towards the accused's wife provoking the accused to anger which he was unable to control leading to killing of the deceased herein.
12. No previous convictions against the accused were availed to court. The state urged this court to treat the accused as a first offender
13. Mr. Chepkilot submitted that the accused is remorseful of the offence and the deceased was his friend. The community gave a positive report of the accused stating he has lived faultless life.
14. In view of the above, mitigating factors by the accused through his lawyer and considering the circumstances surrounding this case and bearing in mind the fact that the accused has saved the court's time and resources by pleading guilty to the charge of Manslaughter, I am inclined to impose a lenient sentence to serve as a warning against taking the law in ones' hands.
15. Final Orders:-
  1. Accused to serve 5 years imprisonment
  2. Period served in remand to be reduced from the sentence from the sentence above.
  3. Right of Appeal 14 days.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET**



**THIS 27<sup>TH</sup> DAY OF APRIL 2023.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Mr. Sitienei - Court Assistant.

Mr. Kiptoo holding brief for Mr. Chepkilot for accused.

