



REPUBLIC OF KENYA



**Republic v Cherutich (Criminal Case 67 of 2017)
[2023] KEHC 3809 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3809 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 67 OF 2017
RB NGETICH, J
APRIL 27, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

RODGERS KIPSANG CHERUTICH ACCUSED

RULING

1. The accused Rodgers Kipsang Cherutich was charged with an offence of murder contrary to section 203 as read together with section 204 of the Penal Code. The particulars of the charge being that the accused on the 18th day of June, 2016 at Logiri village in Mogotio Sub- County within Baringo county, unlawfully killed Toyoi Kipkoech Selembu.
2. The accused denied the charge and the case proceeded for hearing with prosecution availing to testify in support of their case.
3. On 18th August 2019, the defence counsel informed court that the accused was desirous in pursuing plea bargain. On 20th march 2023 Parties executed plea bargain agreement to have the charge reduced to manslaughter upon which the charge and particulars of the offence of manslaughter were read over and explained to the accused who pleaded guilty and was convicted under section 202 as read with section 205 of the Penal code.
4. Brief facts of the case are that on the 17th and 18th day of June 2016, at around 9p.m, the accused went to his mother's house and asked for whereabouts of his siblings
5. Upon conviction of the accused the state counsel informed the court that they have not found any prior records of the accused and urged the court to treat him as a first offender.



6. The accused mitigated through his Advocate Mr. Kipkulei who submitted that that the accused is 42 years old, a first born in a family of six siblings; he is not married and does not have a child. That he is a partial orphan having lost his father in the year 2005.
7. Counsel submitted that the accused is remorseful; he regrets having committed the offence and he has sought forgiveness with the family of the deceased who have agreed to forgive him.
8. Further that the accused has undergone bible training; that he has reformed and he is now a Christian. He wishes to start a family and build the nation. He is a first offender. Counsel urged the court to impose that the accused has been in custody since June, 2016 and consider a non-custodial sentence
9. On the 20th March, 2023 the Court made an order for a pre-bail report to be prepared by the probation officer before making any determination on the matter.
10. From the report, the offender's family has not initiated any reconciliation process with the victim's family which in view of the probation officer made many of those interviewed shy away from giving any meaningful comment. The officer recommends that a non-custodial sentence may not be appropriate as of now since the offender's family have not taken the first initiative as it has always been with the Kalenjin traditional rites as regards manslaughter/murder cases; and urged this court to exercise its discretion in sentencing the offender.
11. Section 205 of the Penal code provides life imprisonment as the punishment for manslaughter is. I however take note of the sentencing guidelines.
12. I have considered mitigating factors through counsel for the accused. I note from the probation report that the accused has no clear recollection of how he committed that offence. From the report he indicated that he was not of right mental status but he recalls struggling over a panga with the victim. I also note from the report that no reconciliation has been initiated as the deceased's only son who was following up the matter passed on.
13. From the probation officers report, prior to his arrest, the accused was known to abuse alcohol and bhang from early age and at the time of committing of the offence, he was drunk and became violent and due to heavy drinking, he experiences hallucinations which made him follow up the victim and attacked him
14. I have considered the circumstances surrounding this case as presented to the court by way of facts, mitigation and presentence report. I also take note of the period served by the accused in remand being from year 2016 a period of 7 years and I am inclined to impose a non-custodial sentence

Final Orders:

1. Accused to serve 3 years' probation sentence
2. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 27TH DAY OF APRIL 2023.

RACHEL NGETICH

JUDGE

In the presence of:

Mr. Sitienei - Court Assistant.



Mr. Kipkulei for accused.

