



REPUBLIC OF KENYA



**Republic v Cherogony (Criminal Case 14 of 2019)
[2023] KEHC 18001 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18001 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 14 OF 2019
RB NGETICH, J
MAY 31, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

WILLIAM CHEROGONY ACCUSED

RULING

1. The accused William Cherogony was charged with an offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the charge being that on the 26th day of July, 2019, at Koimugul village Sibilo sub-location within Baringo North Sub-County in Baringo County, the accused unlawfully murdered Kangogo Cherogony alias Sammy.
2. When the matter came up for hearing on the June 29, 2022 before Honorable Justice W Korir, Mr Kipnyekwei counsel for the accused informed the court that the accused was ready to plead guilty to a lesser charge of manslaughter; that the accused and the deceased were brothers and they were drunk at the time of occurrence of the offence; they intended to write to the Office of the Director of Public Prosecutions to request for plea bargaining.
3. On the 23.03.23, the state counsel informed the court that the plea agreement was ready and the same was executed on the 29.03.23. The charge was reduced to manslaughter. On the same date, the charge and its full particulars were read over to the accused. He pleaded guilty to the offence of manslaughter as provided under section 202 as read with section 205 of the Penal Code and was convicted on his own plea of guilty.

Brief Facts of the Case

4. On July 26, 2019 at around 6.30 p.m, one Ezekiel Chesang was at his homestead when he saw two young men pass a footpath near his home quarrelling and after a few minutes, he heard a loud bang behind him and heard one of the men say “you must die. He went back to confirm what was wrong



with the two men and found they had already entered his compound. He recognized them as William Cherogony the accused herein and Kangogo Cherogony the deceased herein who are brothers from neighboring Randonin sub-location; the accused was holding a sharp panga and he had already cut the deceased on the head, back, thumb and index fingers of the left hand and was lying down in a pool of blood.

5. The accused upon seeing Ezekiel Chesang dropped to the ground the blood-stained panga he had used to cut the deceased and ran away leaving the deceased in pains and bleeding profusely from the cut wounds. Ezekiel Chesang called his neighbours who administered first aid and looked for means to take the deceased to hospital but he succumbed to the injuries before he could be taken to hospital.
6. On the 27th day of July, 2019, the accused was arrested by members of the public who handed him over to the area assistant chief together with the blood-stained panga used in the commission of the said offence. The area assistant chief called the police from Loruk police station who visited the scene, photographed the same and drew a sketch plan before re-arresting the accused and escorting him to Loruk police station and later to Kabarnet police station. The deceased body was taken to Baringo county referral hospital where post mortem was conducted and the cause of the death ascertained to be acute head injury and chest trauma secondary to sharp force trauma following an assault.
7. Upon his arrest the accused was interrogated and he admitted having committed the said offence in self-defence after the deceased threatened to kill him following after demand for his share of Kshs 100/= being payment for the casual work they had done together at the home of one David Lopua. He further stated that he was not intending to kill his brother but what happened was due to bad luck. The postmortem report was produced in court as exhibit 1, accused statement as exhibit 2 and the blood-stained panga as exhibit 3.
8. On the 29th March 2023 the court directed a pre-sentence report be prepared by the probation officer before mitigation and the report was filed on the May 19, 2023.

Presentence Report

9. From pre-sentence report, the accused said he was under the influence of alcohol and was not able to control his anger; that he never intended to kill his brother but he killed out of bad luck. He prays for a non-custodial sentence so that he can re-start his life a fresh.
10. The family described the deceased as the most troublesome child in the family and his death was bad luck and since they had lost their elder child, they urged this court to grant a non-custodial sentence and the elder siblings indicated that they were willing to facilitate accused's re-integration within the community and they had forgiven and accepts him as a family.
11. The community/local administration indicated that the accused is well known, he was of good character and this is the first time he has found himself against the law. They confirmed that the deceased was the most troublesome youth within the community and he had benefited from alternative dispute resolutions but had not changed his character. The community did not oppose the accused being granted a non- custodial sentence indicating that the community at large is not hostile to him.
12. In view of the above the probation officer recommends probation sentence so that the accused may benefit from guidance and counselling on anger management, drug and substance use and ensure full community re-integration takes place but is however subject to the court's discretion.



Mitigation

13. In mitigation Mr Kipnyekwei counsel for the accused submitted that the accused is remorseful and the action was not pre-meditated. That from the information received, the accused and the deceased had gone to do manual work in a neighbor's farm and had been paid Kshs 200/= which each was to take Kshs 100/.He submitted that they passed by a place to take alcoholic drinks and as they proceeded, home the accused requested his brother to give him his Ksh 100/= but he refused resulting in a fight and in the process, the accused cut the deceased with the panga he was using in the farm.
14. He further submitted that the panga the accused used to injure the deceased was not an assault weapon but a tool of trade and the incident occurred as a result of drunkenness and provocation. He stated that the accused is a young man aged 30 years old with a young family and that he had no grudge with his brother; has no previous criminal records and he has been in custody for 5 years. He sought for a non-custodial sentence considering the circumstances prevailing and the remand period, that he is remorseful and undertakes to be a role model in the society.

Determination

15. Section 205 of the *Penal Code* provides life imprisonment as maximum sentence for the offence of manslaughter. I note that the accused is a first offender and has also saved the court's time by pleading guilty to the lesser charge of manslaughter.
16. In the instant case, the prosecution informed the court that the accused was a first offender and I should therefore treat him as such. In mitigation, the counsel informed the court that accused is remorseful and regrets committing the offence. He has been in prison for 5 years; that he has reformed and is ready to be integrated to the society and be a role model.
17. I have considered the fact that the accused and the deceased were brothers. On 26/7/19 disagreement arose on how to share kshs 200 they received for doing casual job for a neighbor. I note that the family and the local administration described the deceased as the most troublesome youth within the community and had not reformed despite being subjected to alternative dispute mechanisms.
18. From the presentence report, facts of the case and mitigation by defence counsel, the accused was provoked prompting him to use the panga they used in farming to cut his brother. There is no doubt that there was need for the accused to restrain himself from occasioning fatal injury to his brother. He failed by not containing his anger. In my view he requires guidance on anger management.
19. I have taken note of the fact that accused has been in remand for a period of 5 years. I also take note of the fact that the deceased was a brother to the accused and the family who considered the deceased as the most troublesome in the family have lost two members of the family. They have committed to assist the accused to reform and reintegrate back into the society. The local administration confirmed that the deceased was so troublesome in the community. That however did not give the accused a right to take away his life
20. In view of the above, I am inclined to impose a non-custodial sentence
21. 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 31ST DAY OF MAY 2023.

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RACHEL NGETICH

JUDGE

In the presence of:

Mr. Kemboi - Court Assistant.

Mr. Kipnyekwei for accused.

Accused present.

Ms. Ratemo for state.

