



Republic v Kibet (Criminal Case 10 of 2019) [2023] KEHC 19434 (KLR) (29 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19434 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 10 OF 2019
RB NGETICH, J
JUNE 29, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

TITUS KIPNGETICH KIBET ACCUSED

RULING

1. The accused person 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 being that the accused on June 9, 2019 at Kasereti village, Sorok sub-location, Tenges Division, in Baringo Central sub-county, within Baringo County, unlawfully killed Silas Kibowen Ruto.
2. On March 15, 22, the charge was read over and explained to the accused who denied the charge and the matter was set down for hearing. When the matter came up for mention, when the state counsel Ms Ratemo was amenable to proceed with plea bargain and sought for a date to record the plea agreement.
3. On May 2, 2023 plea agreement was duly executed reducing the charge to manslaughter following a plea bargain agreement.
4. On May 24, 2023, the charge of manslaughter and its particulars was read over and explained to the accused where the accused pleaded guilty freely and voluntarily to the offence of manslaughter as provided under section 202 as read with section 205 and was convicted on his own plea of guilty.

Facts of the offence

5. Facts read out by the state counsel on May 24, 23 are that on June 9, 2019 at about 1200hrs, the accused herein reported that he had gone for a drinking spree at a Busaa den within the neighborhood where he met the deceased drinking and he greeted him but the deceased ignored him and refused to shake his hands for unknown reasons. The accused took busaa and went home and on his way, he noticed the deceased following him and he decided to wait for him to hear what he wanted from him.



6. That when the deceased arrived, he asked him where he had gotten the busaa he was carrying in a bottle and before he could answer, the deceased hit him with a walking stick he was carrying; a quarrel ensued leading to a fight. The accused snatched the stick the deceased had and hit the deceased with it severally on his back and other parts of the body until it broke into pieces; the accused got another stick from within and continued beating the deceased up until the deceased fell down.
7. That the deceased screamed attracting the attention of a neighbour namely Sarah Jepkemoi Rop who rushed and found the deceased lying beside the road crying for help while the accused continued to beat him up with a stick. The accused walked away after seeing Sarah coming; the deceased sustained injuries with blood oozing from his head and legs.
8. The deceased went home and reported to his father that he had a fight with the deceased and he feared to have beaten him to death; his father rushed to the scene and confirmed his fears when he found the deceased lying dead beside the road with visible injuries on the body and blood on the ground.
9. The accused reported what had happened to the area assistant chief who advised him to go back to the scene and not to leave the scene. The area assistant chief arrived at the scene and reported the matter to the authorities and to the police who visited and processed the scene and recovered some broken pieces of sticks believed to be the murder weapon. The body of the deceased was taken to Baringo Referral Mortuary for postmortem. The accused was arrested and escorted to Kabarnet police station. Post mortem was conducted on the body of the deceased on the 14.06.19 where the pathologist formed the opinion that the cause of the death was due to head and lung injury secondary to assault. Police file was compiled and the accused charged with the offence of murder now reduced to manslaughter upon plea bargain agreement.
10. The accused admitted the facts as read by the state counsel and he was convicted on his own plea of guilt. The prosecution informed the court that the accused has no previous convictions and he be treated as a first offender.
11. The court called for pre-sentence report which was filed in court on May 24, 23 by the probation officer. However, on the said May 24, 23 Mr. Chepkilot acting for the accused informed the court that the accused notified him that the families have reconciled contrary to what was indicated in the pre-sentence report under victim's family sentiments. He urged the court to have the information confirmed and the court gave directions that the probation officer do confirm the correct position as to whether the accused's family and the victim's family have reconciled or made attempts to reconcile.
12. On June 14, 23, the probation officer one Daniel Too appeared in court to give a report on his findings as ordered. The officer informed the court that the position is that there is no reconciliation and the area Assistant chief had written a letter to court confirming the position.

Pre-sentence Report

13. From the report the accused was born in the year 1989. He dropped out of primary school in standard 7. He is married with 2 children aged 7 years and 4 years; his family have deserted the family home since his arrest and no member has visited him in custody.
14. The accused said the deceased was his cousin and he is remorseful. He pleads with the court to be lenient and is seeking for forgiveness from the deceased's family.
15. The deceased's family indicated that they are totally opposed to a non-custodial sentence; they stated that the trial should have been murder considering the circumstances under which the offence was



committed; however, they accept the prosecution's decision to charge accused with manslaughter and confirmed that there has been no reconciliation.

16. The community/local administration agree with the deceased's family. They are opposed to a non-custodial sentence stating that there still exists tension between the two families. The area chief Emom Location confirmed that the two families have not had any reconciliatory talks and deceased's family want the case to proceed. He attached minutes by the family to his letter. The family left it to court to decide on nature of sentence.

Mitigation

17. The defence counsel Mr Chepkilot mitigated on behalf of the accused. He submitted that the accused is a young man aged 34 years. He is remorseful of the offence and he never intended to kill the deceased but acted out of self defence.
18. counsel further stated that the accused has two children. He was a sole bread winner prior to his arrest. He submitted that the accused was abandoned by his family after his arrest and reconciliations have not taken place since his family are not willing to initiate the process. He prays for a non-custodial sentence. Counsel further submitted that the accused has been in custody for four years and urged the court to consider the time period the accused has been in custody.

Determination

19. Under section 205 of the [Penal Code](#), a person convicted of Manslaughter is liable to imprisonment for life being the maximum sentence. However, courts have discretion to impose lesser sentences depending on circumstances of each case.
20. From the facts herein, the accused and the deceased are cousins. They disagreed after taking illicit brew. From the facts, it's the deceased who hit the accused who then grabbed the walking from the deceased and beat the deceased until it broke into pieces; the accused went for another stick and continued beating the deceased. The deceased succumbed to the injuries.
21. I take note of the fact that accused is remorseful; he regrets committing the offence and is seeking for forgiveness from the court and the deceased's family. I have considered the fact that the convict is a first offender. It is the deceased who initiated the fight. It is unfortunate that precious life was lost. Though the accused was defending himself, in my view he overreacted and used excess force and inflicted fatal injuries on the deceased. Both accused and deceased were drunk at the time of the incident and their reasoning was impaired.
22. I take note of the fact that the family of the deceased are yet to recover from the loss and this may have been prolonged by the fact that the family of accused who are their extended family have not initiated any reconciliation process. Explanation given by accused for delay in reconciliation process is unwillingness from his family to initiate the process. He said his immediate family deserted home and no one has visited him in prison. Accused sought forgiveness through court in his mitigation and while interviewed by probation officer.
23. I have considered circumstances surrounding the commission of the offence herein. I also take note of the fact that no reconciliation has been initiated between the family of the deceased and accused. In the absence of reconciliation, animosity remain between the two families and it may not be safe to release accused back to the community.
24. In addition to the above, even though the accused's action may not have been premeditated, there is no doubt that accused would require counselling to enable him manage anger. A custodial sentence



will also assist in rehabilitating the accused by equipping him useful skills and counselling to enable him manage anger and desist from overindulging in illicit brew; it will also deter other community members from engaging in illicit brew which led illegal activities.

Final Orders: -

1. Accused to serve 5 years imprisonment.
2. Sentence served in remand to be reduced from sentence imposed as per section 333 (2) Proviso of the [Criminal Procedure Code](#).
3. Right of Appeal 14 days.

RULING delivered, dated and signed in Open Court at Kabarnet

This 29th Day of June 2023.

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RACHEL NGETICH

JUDGE

In the presence of:

Mr. Kemboi - Court Assistant.

Ms Ratemo for state.

Mr. Chepkilot for accused.

Accused present

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