



**Republic v Kipkegei (Criminal Case E010 of 2020)  
[2023] KEHC 19348 (KLR) (29 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19348 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE E010 OF 2020  
RB NGETICH, J  
JUNE 29, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ANDERSON KIPKOECH KIPKEGEI ..... ACCUSED**

**RULING**

1. The accused person was charged with the offence of murder contrary to section 203 as read together with section 204 of the *Penal Code*. The particulars of the charge being that on 6<sup>th</sup> day of December 2020, at hot point bar at Esageri trading centre, Kabimoi Location in Koibatek Sub- County within Baringo county at around 1900hrs the accused murdered one Michael Kipkogei Seba.
2. On 23.11.2021, the charge and its full particulars was read over to the accused who denied the charge and the matter was set down for full hearing. When the matter came up for hearing before Honorable Justice W. Korir, the defence counsel Mr. Kiptoon informed the court that he had looked at the statements and had already talked to the accused who is alleged to have murdered his father and that they intended to pursue plea bargaining and would be writing to the DPP.
3. The court noted that it is important to give the parties a chance to explore plea bargain in the matter and directed the matter be mentioned on 27.01.2022 for the parties to inform the court the outcome of plea bargain.
4. On the 23.03.23, the plea agreement was duly executed. The charge was reduced to manslaughter following a plea bargain agreement. On 29.03.2023, the charge and its particulars were read over and explained to the accused where the accused pleaded guilty to the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code and was convicted on his own plea of guilty.



## **Facts of the offence**

5. The brief facts of the case are that on the 6<sup>th</sup> day of December, 2020, at 9: 00p.m, Fidelia Bowen an attendant at Hot point pub in Esagari trading centre, reported to the police station through telephone that as she was going to close the rear gate of the bar, she stumbled on a body that was lying on the ground with injuries on the chest and the throat; had blood stains on the right hand.
6. Police officers from Esagari visited the scene immediately. They interrogated the said bar attendant who informed police that she had not heard any commotion nor screams. The officers observed that the body of the deceased had injuries on the throat, chest and blood stains on the right hand; they also observed blood stains on the rear gate, took photographs and removed the body to Eldama Ravine Hospital Mortuary for post mortem.
7. That at the scene, there were no people except the bar attendant who was escorted to Eldama Ravine police station to record her statement. That the following items were recovered from the deceased pockets; a pen knife with blood stains, net rope, techno mobile phone-black, a rungu with blood stains were recovered and the same were kept for DNA analysis as exhibits.
8. On the 7<sup>th</sup> day of December 2020, the accused was arrested and handed over to Esagari Police Post by the Area Assistant Chief Kabimoi Sub-location and the Area Assistant Chief Orongai Sub-location after getting information that he had attended treatment at Esagari Health centre at about 9: 00p.m after the murder incident report was made to Esagari police post. On observation, they found that he had injuries on two fingers of the right hand which were still bleeding; the accused alleged that he had been cut by a falling panga while in his house.
9. At the police station, the accused admitted that he had met with the deceased who is his father at hot point pub where an altercation occurred between them over alleged sale agreement of land which the deceased had demanded that the accused sign and deceased also quarreled him over a caution that they had put on land parcel number Lembus/Kabimoi/617.On 24.09.19 stopping the deceased from any sale of land without their consent.
10. The accused alleged that the deceased hit him on the right ribs with a walking stick then placed down and removed a pen knife which he used to stab the deceased on the chest and throat twice then fled away on foot when the deceased screamed.
11. After that, the accused ran towards the rear gate where he washed his hands and threw away the killer weapon. Later the accused led the police officers to the river side where he had washed his hands and threw the knife. After a long search with no recovery, the accused led the police to his house where two blood-soaked bandages were recovered outside his house.
12. On 9/12/20, postmortem was conducted on the body of the deceased and the doctor formed the opinion that the cause of death was as a result of hemorrhage and Asphyxia due to cut throat injuries and penetrating chest stab wound. The accused was charged with offence of murder which has been reduced to manslaughter upon plea bargain agreement.
13. On 29.03.23 the court directed pre-sentence report to be filed before mitigation and the report was filed on the 26<sup>th</sup> April, 2023.

## **Pre-sentence Report**

14. From presentence report, the accused admits the offence as charged and he is remorseful of the offence. The deceased (victim) is the father to the accused. Report indicate that the other family members who



were interviewed stated that the accused and the deceased had a good son and father relationship and the accused was known to be a peace-loving person safe for the current incident.

15. The report further indicates that most of the family members stated that they had talked as a family and resolved to forgive their kin for what he did and urged the court to sentence the accused to serve a non-custodial sentence.
16. The community/local administration indicated that the accused does not have criminal records safe for this offence and does not object to a non-custodial sentence. The probation officer recommends a probation sentence for a period of two years, subject however to the court's discretion. The prosecution informed the court that the accused is a first offender.

### **Mitigation**

17. The defence counsel Mr. Kiptoo mitigated on behalf of the accused; he stated that the accused is a young man aged 25 years who has been in custody since 2020; he is married with 2 children who remained with their grandmother when the accused was arrested since the wife abandoned the children.
18. Counsel further submitted that the accused was a sole bread winner before his arrest and regrets the entire incident which happened when he was drunk and was instigated by the deceased. He submitted that the accused in self defence caused the death of the deceased; that the family have reconciled and they are preparing cleansing. He further stated that the accused is reformed, is now a Christian and will never drink; that he is a first offender and they are praying for a non-custodial sentence and for the court to consider the period he has served in remand; he prayed for leniency so that he can go back to his family and provide for his children who are no longer going to school.

### **Determination**

19. Section 205 of the Penal Code provide sentence of imprisonment for life for the offence of manslaughter. The court however has discretion to impose a lesser sentence depending of circumstances of each case.
20. From the facts stated by the state counsel, a quarrel ensued between the accused and the deceased who was his father over land sale agreement which the deceased wanted to sell but the accused had lodged caution. Following the quarrel, the accused stabbed the deceased's chest and throat with the pen knife.
21. I take note of the fact that the accused is a first offender and is remorseful and has saved the court's time and resources by pleading guilty to the lesser charge of manslaughter. I have also Considered that the accused has been in remand for a period of approximately 2 ½ years; further that the family which is his own family have forgiven accused. In view of the above, I will impose a lenient custodial sentence.

### **Final Orders: -**

1. Accused to serve 7 years imprisonment.
2. Period served in remand to be reduced to be reduced from sentence imposed.
3. Right of appeal 14 days.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET**

**THIS 29TH DAY OF JUNE 2023.**

.....

**RACHEL NGETICH**



## **JUDGE**

### **In the presence of:**

Mr. Kemboi - Court Assistant.

Ms. Ratemo for state.

Mr. Chepkilot holding brief for Mr. Kiptoo.

Accused present.

