



**Republic v Taalam (Criminal Case E007 of 2022)
[2023] KEHC 19332 (KLR) (29 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19332 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E007 OF 2022
RB NGETICH, J
JUNE 29, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

LINA SOTE TAALAM ACCUSED

RULING

1. The accused person was charged with the offence of murder contrary to section 203 and 204 of the *Penal Code*. The particulars of the charge being that the accused on the 22nd day of April, 2022 at Chepkero sub-location, Sacho Division in Baringo central Sub- County within Baringo County murdered Sote Toroitich.
2. On May 16, 2022 the charge was read over to the accused who denied the charge. On the November 23, 2022 when the matter came up for hearing before Honorable Justice Teresiah Matheka, the defence counsel Mr Chepkilot informed the court that he had perused the statements supplied and he needed time to consult his client on plea bargaining and make proposal on the same to the DPP
3. In response Mr Mongare representing the state informed the court that he had six witnesses in court ready to proceed. He stated that they are yet to commence plea bargaining and the victims want the process to proceed to its logical conclusion. He sought time to consult.
4. On April 27, 2023, plea agreement was duly executed. The charge of murder was reduced to manslaughter and on May 2, 2023, the charge of manslaughter and its particulars was read over and explained to the accused where the accused admitted and was convicted for 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 Ofence

5. The brief facts of the case are that on the April 21, 2022, the deceased Sote Toroitich was invited for a cleansing ceremony at the home of Joseph Yatich Chebii where he went accompanied by his son Musa Chebii. Musa indicated that after his mother completed performing the cleansing ceremony, they were served with local brew (*busaa*) which they drank and around 1500Hrs, he left his mother at the compound of Joseph Yatich Chebii believing that the wife of Joseph, Lina Sote will attend to her.
6. At around 1900 hours, the accused asked the deceased to leave her house because it was getting late but the deceased refused to leave the compound where the accused's husband is and a quarrel then ensued between the accused and the deceased prompting the accused to take a *panga* which she used to inflict fatal injuries on deceased and thereafter accused left the deceased outside her house and proceeded to the house she lived in.
7. The following morning, the accused asked her daughters to bring the deceased into the house, removed her clothes and served her warm milk and told her daughters to take the deceased to the hospital since the deceased had lost her speech. The deceased however died on her way to hospital; on the April 22, 2022 at around 12:15hrs Sammy Koech, Chief Chepkero Location reported the matter at Tenges police station vide OB No 07/22/04/2022.
8. The officers from Tenges police station visited the scene on the April 22, 2022, processed the scene and recovered a panga used to inflict injuries on the deceased at the homestead of Joseph Yatich Chebii and consequently kept as an exhibit.
9. Investigations were conducted and autopsy performed on the 5/05/2022 by Dr Dr Mary of Baringo County Referral Hospital who formed an opinion that the deceased died due to severe head injury due to internal bleeding; the police file was compiled and the accused was charged with the offence of murder now reduced to manslaughter upon plea bargain.
10. Upon accused pleading guilty to the charge of manslaughter, the state counsel informed the court that the accused is a first offender.
11. On 02.05.23, the court directed that a pre-sentence report be filed before mitigation and the report was filed on the May 19, 2023.

Pre-sentence Report

12. From the report, the accused admits she killed the deceased, she prays for a non-custodial sentence to enable her continue taking care of her family; she says that she has sought forgiveness from the victim's family. The accused's family prayed for the accused to be granted community rehabilitation to enable her continue with her family responsibilities and taking care of a sickly child.
13. The accused husband indicated that he has not initiated reconciliation process on ground that the deceased's family stays very far and they have not had any communication. He stated that he will seek for forgiveness from them and he is willing to accept his wife and facilitate reintegration within the community.
14. The deceased's family indicated that they are still very bitter with what the accused did to them. This is due to the fact that the accused together with her family have not shown any interest in initiating process of reconciliation with them and in the absence of reconciliation, they are opposed to the accused being granted community rehabilitation.



15. The community/local administration indicated the accused is well known to them and she is among the troublesome women within the community; she has received several ADR without change in character. They noted that the community at large is still very hostile to the accused at the moment over what she did. They are opposed to the accused being granted community rehabilitation on the ground that she has been away only for a year and reconciliation has not taken place which is very key considering the offence the accused committed.
16. The probation officer concludes by stating that going by the negative sentiments from the deceased's family, local administration and the fact that reconciliation has not taken place, she recommends the accused to be dealt with otherwise, subject to courts discretion.

Mitigation

17. The accused mitigated through defence counsel Mr Chepkilot who submitted that the accused is remorseful; that the deceased was her friend and at the time of the offence, they were drinking alcohol with the deceased and deceased's husband and she was provoked when the deceased refused to leave her husband's site. Counsel further submitted that the accused is 60 years old and has a mentally challenged daughter whom she has been taking care of since childhood and she regrets killing the deceased.
18. In conclusion, counsel submitted that attempts by the family to reconcile have not been successful and the accused has been in custody for one year and due to her advanced age, she is seeking a non-custodial sentence.

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, the court has discretion to impose a lesser sentence depending of circumstances of the case.
20. From the pre-sentence report that the accused is among the troublesome women within her community who has not changed despite several Alternative Dispute Resolution mechanisms. I note also that no reconciliation between the two families has been initiated.
21. I however consider the fact that the accused is a first offender. I have also considered the fact that she is remorseful and is of advanced age of 60 years and the fact that she has a mentally challenged child. I also take note of the fact that the accused has saved the court's time and resources by pleading guilty to the lesser charge of manslaughter and has been in remand custody for a period of one year. In view of the above I will impose a non-custodial sentence.

Final Orders : -

1. Accused to serve 2 years Probation sentence.
2. 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 for accused.

Accused present.

