



REPUBLIC OF KENYA



Republic v Yegon (Criminal Case 20 of 2018) [2023] KEHC 19436 (KLR) (29 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19436 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 20 OF 2018
RB NGETICH, J
JUNE 29, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

KELVIN KIPTOO YEGON ACCUSED

RULING

1. The accused person had been 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 18th day of November, 2018 at Kapdaining village, koibatek sub-county within Baringo county, murdered Charles Kiptum Kurui.
2. The charge was read over to the accused who denied the charge and the matter was set down for full hearing, two witnesses testified before Hon. Justice Edward Muriithi. However, on the 24.03.22 when the matter came up for hearing before Honourable Justice Weldon Korir, Ms. Cherono representing the accused informed the court that her client had indicated to her that he was interested in plea bargain, she stated that she will make a request to the D.P.P. The court then set a mention date for April 28, 2022 for the progress on the plea bargain.
3. The plea bargain negotiations proceeded till the March 29, 2023 when the plea agreement was duly executed where the charge was eventually reduced to manslaughter following a plea bargain agreement.
4. On the 29.03.2023, the charge 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

5. The facts of the case are that on 18th day of November, 2018 at about 06.44hrs a report of murder was made at Eldama Ravine police station by Evans Kibet Kirui that his brother namely Charles Kiptum Kirui was found murdered at Kapdaining estate along Kapdaining- Eldama Ravine Road. The reporter



stated that he had been informed of the murder by his colleagues whom they worked together as cattle brokers namely Nicholas Kipchirchir Sirgoi and Kering Kipkemoi and another who went to his house and informed him at Kapdaining estate. He together with his colleagues visited and established that indeed it was the deceased who was lying dead with blood oozing from the back and had all the clothes and shoes intact.

6. Police officer from Eldama Ravine visited the scene and found the body lying dead alongside Kapdaining Eldama Ravine Road which was identified by relatives to the police officers and on observation, the body had stab wounds on the back which numbered four, stab wound on the penis, posterior part of the chest and upper middle and lower chest. The body was removed and taken to Eldama Ravine sub-county Hospital mortuary awaiting an autopsy.
7. Investigations were commenced by the DCI office Koibatek and in the course of the investigations, a lady namely Valentine Cherono Serem was encountered and she reported that on the November 17, 2018 at around 2100hrs while she was at Soin Hotel at Eldama Ravine where she worked as a service attendant, the deceased and his friend went to the hotel and ordered food and after eating they paid. The deceased's friend whom she is not known to her requested her to accompany the deceased home since he was drunk and this was at about 10:00p.m.
8. That after Valentine Cherono finished working, she and the deceased who is alleged had started a love affair in the month of February, 2018 left together to Kapdaining estate where on arrival, they stood on an open ground where they had conversations for about 30 minutes when the accused person Kelvin Kiptoo Kipyegon appeared from behind and stabbed the deceased severally on the back.
9. Valentine Cherono screamed loudly and ran away towards her sister's house leaving the deceased and the accused struggling. She found her sister's house locked. She ran towards the accused person's house where she hid for about 20 minutes, as she was hiding, she saw someone flashing a torch and confirmed that it was the accused who was holding a phone with its torch on, a knife and a small purse. She came out of her hiding and went to meet the accused and pleaded with him not to kill her. The accused threatened to kill her arguing that she witnessed the murder incident. The accused then requested her to accompany him to look for a place to hide the knife and they went to a fence about 150 Meters from where they had rented a house.
10. The accused then requested her to accompany him to the scene of crime to confirm the state of the deceased. They went and as they were going, he saw some lights on the road believed to be from a motor vehicle; they turned and went to the accused's house where they spent the night together and, on the 18th November, Valentine woke up at around 6:00 a.m, took a bath and headed to her workplace at Soin hotel, while leaving, the accused warned her not to disclose what happened and he remained behind.
11. While Valentine was at work Nicholas Kipchirchir approached her and inquired from her what had happened the previous evening at Kapdaining estate; she narrated the incident to him and he requested her to accompany him to the police station to report the matter. At the police station, she reiterated what she had informed Nicholas to the police, she disclosed to the police that she had an affair with the accused from January, 2018 and in the month of October, 2018 they developed differences due to accused suspecting her in having love affair and on 16.11.18 Valentine refused to go to the accused's house and went to the deceased's house at Sawmill area within Eldama Ravine. On the 17.11.18, at about 7:00 a.m, the accused person saw the deceased and Valentine walking together towards Soin hotel/butchery but did not do anything and at around 7.20a.m, the accused went and met Valentine at her place of work; he wanted to talk to her but they did not talk over their differences.



12. After said Valentine narrating to the police the incident, she then led the police to Makutano where the accused person had gone hiding. He was arrested at 18:30hrs and escorted to Eldama Ravine police station at about 7:00p.m. The accused disclosed that he had a love affair with Valentine. He then led the police to Kapdaining estate where he showed them where he had hidden the killer weapon(knife) which was recovered and kept as exhibit. An autopsy was performed on the body of the deceased and the result was that the cause of death was as a result of right and left heart thorax from deep stab wounds. The police file was compiled and the accused charged with the offence of murder now reduced upon request for plea bargain to manslaughter.
13. After the accused agreed with the facts as read over to him. The prosecution informed the court that the accused is a first offender.
14. On the 29.03.23 the court ordered that a pre-sentence report be filed before mitigation and the report was filed on the April 26, 2023.

Pre-sentence Report

15. According to the report, the accused is a son of Mathew Mitei and Judith Nderu who are separated, he has 4 other siblings. The accused had formal education up to form three where he dropped out of school for lack of school fees, he went back to school in Kericho County and joined Sinonin secondary school in form three when he committed the offence and was arrested. He admits the offence of manslaughter as charged and states that he did not know the deceased but they fought over a girlfriend and in the course of the fight, he stabbed the deceased with a knife killing him. He regrets what he did and pleads for leniency, that he is a first offender and he never intended to kill the deceased. The report indicates that the accused does not drink alcohol and has never smoked and/or had any drug and substance abuse.
16. The deceased's family indicated that reconciliation process was done between the two families and has been completed as per the Kalenjini traditional rites. The two families met, talked and agreed to pay the traditional 9 cows to the deceased's family who have confirmed that they have received the nine cows as agreed. However, the deceased's family are yet to be paid one black cow to be given by the accused once he is out of custody. The deceased's family have no objection if the accused is sentenced to a non-custodial sentence for they have reconciled and have concluded what is mandatory for the two families as per the Kalenjini tradition.
17. The community/local administration indicated the accused is well known to them and she is among the troublesome women within the community; that 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 oppose the accused being granted community rehabilitation noting that the accused has been away only for a year and reconciliation has not taken place which is very key considering the offence the accused committed.
18. Further that due to the above sentiments for the deceased's family, the probation officer recommends that the accused may be sentenced to two years' probation order subject to court's discretion during which the accused will be guided, counselled, reintegrated and resettled into the community.

Mitigation

19. Ms. Cheronu counsel for the accused mitigated on his behalf and told the court that the accused is remorseful; he is a first-time offender and at the time of the incident, he was a form three student at Sinonin Secondary school, she urged the court to grant accused a chance to serve a non-custodial



sentence, he wishes to go back to school to complete his studies. That the accused has been in remand since 2018 as he was unable to secure bond, that the two families have reconciled.

Determination

20. The court however has discretion to impose a lesser sentence depending on circumstances of each case.
21. I have considered accused's mitigation through his Advocate. I take note of the fact that accused the offence arose from conflict between deceased and accused over a girl friend and that the accused attempted to cover up for his action after commission of the offence. The offence may not have been premeditated but accused took his anger to high level by killing the deceased. He lacked self-control. However, in view of remorse on part of the accused and action taken between family of accused and deceased to reconcile the two families, I am inclined to impose a lenient sentence.
22. Final Orders:-
 1. Accused to serve 10 years imprisonment.
 2. Period served in remand to be reduced from sentence imposed in accordance with section 333 (2) of *Criminal Procedure Code*.
 3. Right of appeal under section 379 (3) of the *Criminal Procedure Code* is explained.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY 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.

Ms. Cheronno for accused.

Accused present.

