



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kipchabus (Criminal Case 25 of 2019)
[2023] KEHC 20914 (KLR) (27 July 2023) (Sentence)**

Neutral citation: [2023] KEHC 20914 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 25 OF 2019
RB NGETICH, J
JULY 27, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

TIMOTHY KEMBOI KIPCHABUS ACCUSED

SENTENCE

1. The accused Timothy Kemboi Kipchabus was charged with the offence of murder contrary to section 203 and 204 of the *Penal Code*. The particulars of the charge being that on the 11th day of November, 2019 at Kamakonye Village in Baringo South sub-county within Baringo County, the accused murdered Melvin Chemjor.
2. The charge was read and its full particulars was read over and explained to the accused who pleaded not guilty and the matter was set down for full hearing. However, on the 26.10.22 when the matter came up for hearing before Honourable Justice Hillary Chemitei, Advocate Mwaita informed representing the accused informed the court that they wish to pursue plea bargaining.
3. On April 25, 2023 plea agreement was duly executed and the charge was eventually reduced to manslaughter. On the April 25, 2023, the charge of manslaughter and its particulars was read over and explained to the accused. He pleaded guilty to the offence of manslaughter as provided under section 202 as read with section 205 and the court convicted him on his own plea of guilty.

Facts of the offence

4. Prosecuting counsel stated that on the November 11, 2019 at about 8 p.m at Kamakongwe within Baringo South, the accused was arrested within Marigat police station after going to report that he had killed the deceased herein. The deceased's husband Kennedy Koech had also gone to the police station to report the murder incident of his wife Melvin Chemjor by the accused. Upon report of the incident, the accused was placed in custody.



5. The prosecuting counsel stated that on November 11, 2019 at about 8: 00p.m Kennedy Koech was in his house when he heard the accused person who is his neighbour asking, “Don’t you people want my family to stay here or what is happening?”. The deceased went out of the house and asked the accused what was going on and after a brief moment, Kennedy Koech heard a sound of a single strike then heard his wife cry and went silent. He rushed out only to find her lying down.
6. The deceased’s husband was not able to confront the suspect as he was armed with an axe. He decided to run away only to come back and find his wife lying in a pool of blood dead. He went to report the incident at Marigat Police station. On inquiry, the accused indicated that he had been having issues with the deceased since 2018; he said the deceased had been insulting him on several occasions. The accused presented himself at the police station with the murder weapon an axe.
7. Post mortem was conducted on the body of the deceased and the cause of the death ascertained to be acute head injury due to sharp force trauma following assault. Police file was compiled and the accused charged with the offence of murder now reduced to manslaughter following plea bargain.
8. On the 25.04.23, the court directed that pre-sentence to be filed before mitigation and the report was filed on the May 19, 2023.

Pre-sentence Report

9. According to the report, the accused dropped out of school in standard 8 due to family disagreements. He started doing casual work within the community. He is married and blessed with two children who are in Primary school. He admits the offence and prays for leniency indicating that he is the provider of his young family. He prays for a non-custodial sentence and promises to reconcile with the family of the deceased once he is released.
10. The accused’s family prayed that the accused be granted community rehabilitation so that he can continue with his family responsibility. The family is willing to facilitate his re-integration within the community. They indicated that they have not initiated any reconciliation process on ground that the deceased’s family is very far and they do not know the deceased’s family very well. They however indicated that once the accused is released, they will initiate the reconciliation process.
11. The deceased’s family are opposed to the accused being granted community rehabilitation stating that the accused’s family have never taken any step to ensure that cultural reconciliation has taken place. The deceased’s husband stated that upon the demise of his wife, life has not been easy and raising his children aged 7 years and 3 years has been difficult and currently they are at their maternal grandparents’ home. The deceased’s siblings are still bitter. They stated that they had educated their sister and had graduated as a teacher but she was not able to practice her profession and they are economically and emotionally drained and they are the ones now taking care of the deceased’s children.
12. The community/local administration indicated that the accused is well known in the community; that he is a first offender. That the community at large would have accepted the accused very well if he had initiated reconciliation process with the deceased’s family but in the absence of reconciliation, the community is hostile and express bitterness towards him; the community propose that the accused be granted community rehabilitation once reconciliation has taken place.
13. The Probation Officer’s view is that due negative sentiments from the deceased’s family, local administration and in the absence of reconciliation process which is key with this kind of offence, the accused is not fit for community rehabilitation, however, subject to court’s discretion.



Mitigation

14. Mr. Mwaita counsel for the accused mitigated on his behalf. He informed the court that the accused is remorseful; he did not intend to cause the death of the deceased but he was extremely drunk on that fateful night. Counsel sought forgiveness on behalf of the accused and leniency from the court. Counsel submitted that the accused is a young man, married and blessed with 2 children. He submitted that the accused had no grudge against the deceased. He said the accused send his father to talk to the deceased's husband with a view of reconciliation but his response was that the Government to deal with the matter first.
15. Counsel further submitted that the accused is a first offender and has been in custody since November, 2019. He urged the court to consider the time spent while in custody when dealing with the sentence. He said the accused has reformed; that he has studied theology and is going on with his diploma studies in the same field which will lead him to become a pastor.

Determination

16. Under section 205 of the *Penal Code* a person convicted of Manslaughter is liable to imprisonment for life. However, the court has discretion to impose a lesser sentence depending on circumstances of each case.
17. Facts show that the deceased killed the deceased as a result of love triangle. He however regrets committing the offence, he has asked for forgiveness while mitigating through his Advocate and wishes to reconcile with the family of the deceased. His uncontrolled anger has caused suffering to the children of the deceased and her immediate family.
18. The accused attacked the deceased who was unarmed by striking her with an axe on her head, eventually causing her death. A person who attacks another on the head with an axe is expected to know that such an attack could lead to death or grievous harm. Accused acted in very inhumane manner. The fierce attacked on the deceased by accused occurred without any provocation and there is need to impose deterrent sentence. In view of the above, I am inclined to impose custodial sentence.
19. Final orders: -
 1. Accused to serve 10 years imprisonment
 2. Period served in remand from the date of arrest to be reduced from the sentence herein
 3. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET THIS 27TH DAY OF JULY 2023.

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RACHEL NGETICH

JUDGE

