



**Republic v Kiptui (Criminal Case E032 of 2021)  
[2023] KEHC 21283 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21283 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE E032 OF 2021  
RB NGETICH, J  
JULY 27, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ALEX KALEMAA KIPTUI ..... 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 on the 1<sup>st</sup> day of November, 2021 at Kapundasum village, within Keitumet location within Mogotio sub-county in Baringo County the accused murdered Joseph Kipsingor Kiptui.
2. The charge and its full particulars were read over to the accused. The accused denied the charge and the matter was set down for full hearing. However, on the May 23, 2022 when the matter came up for hearing before Honourable Justice W Korir, the defence counsel Mr Mwaita informed the court that his client is willing to plead to the lesser charge of manslaughter and sought time to write to the Director of Public Prosecutions for plea bargaining. The court then set a mention date for July 18, 2022 to confirm the progress on the plea bargain.
3. The plea bargain negotiations proceeded till the 22<sup>nd</sup>, May, 2023 when the plea agreement was duly executed where the charge was eventually reduced to manslaughter following a plea bargain agreement.
4. On the May 22, 2023, the charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code* and its full particulars was read over and explained to the accused who pleaded guilty and he was convicted on his own plea of guilty.



## **Facts Of The Offence**

5. The facts of the case is that on the night of October 31, 2021 and November 1, 2021 at around 1:00 a.m. Joseph Kipsingor Kiptui (deceased) who was an elder brother to the accused picked a quarrel with the accused over the ownership of over 40 bee hives left behind by their late father. The accused claiming that he had been denied income from the sale of the honey harvested and his brother was also undermining him and had attempted to sale the family land without seeking consent from the family.
6. This led to a fight between the two brothers. In the process, the accused rushed and picked his bow and arrows from his house and started chasing his brother and shot him with an arrow on the right thigh injuring him seriously. The accused then rushed to the house of his injured brother and woke up his wife namely Usilah, one Joseph Kiptui and Elijah Kibiwott Kiptui who were asleep in his house and his mother namely Salinah Kiptui and informed them that he had killed his brother.
7. They all rushed to the scene where the deceased was lying unconscious. The accused attempted to cause more harm but he was restrained by Elijah Kibiwott Kiptui. Selinah Kiptui rushed to call neighbours for assistance. One Charles Molok and Victor Cherutich Kirui responded and disarmed the accused who then escaped in a nearby bush.
8. The area assistant chief Philemon Kapsabit who quickly responded found that the deceased had succumbed to injuries and had an arrow lodged in his right thigh. The assistant Chief mobilized the neighbors who were at the scene to look for the accused who was traced and arrested. He communicated to Mogotio Police station and police officers visited the scene which they found preserved.
9. The deceased's body was recovered and postmortem done by Dr. Ngulungu who formed opinion that the cause of death was massive blood loss following injury to the femoral artery due to a single stab wound to the right anterior thigh. The police file was compiled and the accused charged with the offence of murder now reduced to manslaughter following plea bargain.
10. On the May 22, 2023, the court ordered pre-sentence report be filed before mitigation and the report was filed on the June 8, 2023.

## **Pre-sentence Report**

11. From the report, the deceased's family members are divided concerning noncustodial or custodial sentence. Some are in support while some are against. The local administration indicate that the deceased was of good conduct before the offence herein. They are pro non-custodial sentence for the accused.

## **Mitigation**

12. Mr Chepngoswa holding brief for Mr. Mwaita counsel for the accused mitigated on behalf of the accused. He informed court that accused is remorseful. He urged the court to take into consideration the fact that the accused is a first offender, he is single man aged 20 years and willing to reform and re-integrate into the society; that he is partial orphan who was staying with his mother and siblings.
13. Counsel further stated that the accused has reconciled with the wife of the deceased and family at large; that the deceased was his family. He submitted that the accused has been in remand for one and half years having been arrested on November 1, 2021 and remained in remand.



## **Determination**

14. 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 lesser sentence depending on circumstances of each case.
15. I have considered circumstances surrounding the offence. I take note of the fact that the accused and the deceased fought over family property. The accused was not able to contain his anger. He went for a bow and arrows and shot his brother occasioning injuries which led to his brother's death. I take note of the fact that he is remorseful and has sought forgiveness from his family more so, the deceased's widow.
16. I am however of the view that the accused stretched his anger too far by going for bow and arrow to shoot his brother and even after shooting him, if not restrained he tried to inflict more harm on his brother. In my view the accused deserve deterrent sentence. I will impose custodial sentence and in view of the fact that he saved the court's time by pleading guilty to a lesser charge of manslaughter, I will impose lenient custodial sentence.

## **Final Orders: -**

- i. Accused to serve 7 years imprisonment
- ii. Sentence to run from the date the accused was arrested
- iii Right of appeal 14 days.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 27<sup>TH</sup> DAY OF JULY 2023.**

.....

**RACHEL NGETICH**

**JUDGE**

**IN THE PRESENCE OF:**

**MR. KEMBOI - COURT ASSISTANT.**

**MS RATEMO FOR STATE.**

**NO APPEARANCE FOR ACCUSED.**

