



REPUBLIC OF KENYA



KENYA LAW
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**Republic v AK (Criminal Case E024 of 2021)
[2023] KEHC 23016 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 23016 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E024 OF 2021
RB NGETICH, J
SEPTEMBER 28, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

AK ACCUSED

RULING

1. The accused AK 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 21st day of June, 2021 at around 1700hrs in Katunoi sub-location within Baringo Central sub-county the accused willfully and unlawfully murdered MR and AK.
2. The charge and its full particulars were read over to the accused who pleaded not guilty and the matter was set down for full hearing. However, when the matter came up for hearing on the 23rd May, 2022, the defence counsel Mr Chepkilot informed the court that he had received instructions from his client to request for plea bargain with the director of public prosecutions. The matter was set for mention on 18th July, 2022 for purposes of confirming the progress on the plea bargain.
3. On 25th April, 2023 plea agreement was duly executed. The charge was reduced to offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. On 14th June, 2023, the charge and its particulars were read over and explained to the accused. He pleaded guilty to the lesser charge of manslaughter and he was convicted on his own plea of guilty.

Brief facts of the Offence

4. The facts of the case are that on 21st day of June 2021, the accused and deceased AK were in their brother MCK's house who was with his wife MR the deceased herein. When the accused and deceased quarreled over a piece of land; the quarrel escalated to a fight culminating in the deceased AK hitting



the accused herein with a stone. Upon being hit by the deceased with a stone, the accused entered MCK's house and armed himself with a bow and arrows.

5. The accused aimed at his sister in-law MR(deceased) who was holding her baby and hit her on the left side of the chest just below the breast; the arrow penetrated to the lungs. The accused removed the said arrow from her chest and left her for the dead as he began to chase after his brother the 2nd deceased AK; he aimed at him and shot him with arrows three times; one on the nose, another on the chin and the third one on the chest which got him while on the run. The arrow penetrated to the second deceased's heart; the accused herein removed all the arrows except one which was stuck on the deceased AK's chest and ran away.
6. A crowd gathered as a result of the screams from the late MR who was found fighting for her life while holding a baby in her arms; she was soaked in blood. MR asked one WC who arrived at the scene to inform her husband that the accused had killed her. The deceased persons were rushed to the hospital but they unfortunately succumbed to the injuries sustained.
7. The accused was arrested after a police officer at Kabarnet police station received a report that the accused had been spotted in town; police recovered the bow and blood-stained arrows which were kept as exhibits.
8. on 29th June, 2021 JR, the late MR's father identified her body to the pathologists who performed post mortem, while RK identified the body of the late AK. Police file was compiled and the accused arraigned before court and charged with two counts of murder now reduced to two counts of manslaughter contrary to section 202 as read with section 105 of the penal code following plea bargain agreement.

Pre-sentence Report

9. Presentence report was filed on the 11th day of July, 2023. From the report, the accused is remorseful of what he did and blamed it all on the anger which had boiled for a long time as a result of what he termed as "long time mistreatment" by the deceased AK. He is remorseful and asks for forgiveness from the parents of the deceased MR who was innocent but caught up in sibling rivalry.
10. The family of the late MR blame the second deceased AK for the incident. The accused is the last-born child to his late parents who passed on when the accused was toddler. MR's husband MK stated that the parents of the accused died as a result of HIV and the accused became a victim of the said disease and has been on medication ever since he was a child. He said the deceased AK used to mock the accused that there was no need for the accused to be apportioned family land since he was going to die anyway.
11. On the material day, the late AK mocked the accused about his condition and again stated that there is no way the accused was going to get the family inheritance and the accused felt humiliated and reacted in a drastic way.
12. The family is not opposed to the non-custodial sentence for the accused bearing in mind his health condition and needs. The family further states that if the Honourable court will grant a non-custodial sentence, the family of the accused will make alternative arrangements on where he will relocate which will reduce emotions in the immediate family and the first victim's family who are their in-laws and the community at large.
13. The local administration through the area chief is opposed to non-custodial sentence on grounds that the community is hostile to the accused and his security may be compromised. The local administration further stated that the accused's previous character has been wanting. The area chief states that the



accused has a previous offence of defilement and was committed to a juvenile rehabilitation Centre. Probation officer urged this court to exercise discretion.

Submissions by the State

14. The state counsel Ms. Ratemo referred to the case of *State vs Kevin Omondi Amoo* (2022) eKLR where the accused and the state had entered into plea bargain agreement and the accused admitted the facts as read to him. She submitted that the circumstances in this case do not justify the killing of the victims. Counsel proposed a minimum of 40 years imprisonment.

Mitigation

15. The defence counsel Mr. Chepkilot mitigated on behalf of the accused and informed the court that the accused is remorseful and is a first offender. That the accused is aged 26 years, a very tender and productive age and that on the fateful date, the accused was provoked beyond his control by his brother prompting him to pick arrows and aimed at his brother who unfortunately used the sister in-law as a shield and in the process the sister in-law sustained fatal injuries; thereafter the accused went after his brother and killed him.
16. Counsel informed the court that the accused regrets the incident. Counsel called upon the court to look at the contents of paragraph 2 of the probation officers report and to consider the condition of the accused in making the decision. Counsel submitted that the accused has been in custody since 26th June, 2021.

Determination

17. Under section 205 of the Penal Code, a person convicted of the offence of Manslaughter is liable to imprisonment for life. However, the court has discretion to impose a lesser sentence depending on circumstances of each case.
18. I take note of the fact that the accused acted as a result of being provoked by his late brother AK. He however used excessive force and acted in a very inhuman manner by shooting the deceased persons and removing the arrows from their bodies which must have inflicted serious pain on the deceased persons.
19. I have considered the fact that he is remorseful and regrets the action he took in anger which resulted in the death of his brother and sister in-law. The children of the two deceased persons have been denied parental care and love. The accused might have felt provoked by his brother's actions of refusing to have him get his share of inheritance and frequent mocking him on his health condition, but there are other ways of settling disputes rather than resorting to killing. The act of accused killing his brother and sister in-law using a bow and arrows may not have been premeditated but clearly demonstrate lack of self-control.
20. I have considered the circumstances surrounding commission of the 2 offences herein, the fact that the deceased persons and the accused were close relatives including the fact that they may have had differences over land. Out of built-up anger, accused chose to arm himself went into a murderous rampage by attacking the deceased persons herein thereby leading to the death of the two deceased persons.
21. I note that the senseless actions of the accused led to the death of the two deceased persons yet the accused had the option of seeking a peaceful resolution of any dispute that he may have had with second deceased but he chose to take the law into his own hands by killing his opponent the brother and his sister in-law becoming a victim of the circumstances. The actions of the accused person are a clear



testimony of the total breakdown of social values that once held communities together. In my view the accused deserve deterrent sentence. I am inclined to impose custodial sentence.

22. Final Orders: -

1. Accused to serve 15 years imprisonment for each count.
2. Sentence to run concurrently.
3. Period served in remand to be reduced from the sentences herein.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 28TH DAY OF SEPTEMBER 2023.

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RACHEL NGETICH

JUDGE

