



**Republic v Kamengo (Criminal Case 6 of 2020)
[2023] KEHC 23017 (KLR) (28 September 2023) (Sentence)**

Neutral citation: [2023] KEHC 23017 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 6 OF 2020
RB NGETICH, J
SEPTEMBER 28, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

AMONI KAMENGO ACCUSED

SENTENCE

1. The accused Amoni Kamengo 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 March, 2020 at Kakogh village, Amaya Location, Tiaty Sub- County murdered Amoru Komol. The charge was read over to the accused who denied the charge and its full particulars. The matter was set down for hearing. However, when the matter came up for mention before Hon. Justice H.K Chemitei on the December 21, 2022, the defence counsel Mr. Mwaita informed the court that he was pursuing plea bargaining and the court fixed the matter for mention on the 25th of January, 2023.
2. On May 22, 2023 plea agreement was executed and the charge was reduced to manslaughter. On the May 25, 2023, the charge and its particulars were read over and explained to the accused who pleaded guilty to the offence of manslaughter as provided for under section 202 as read with section 205 of the *Penal Code* and he was convicted on his own plea of guilty.

Brief Facts of the Case

3. The facts surrounding the case are that on the 18th day of March, 2020 at around 7:00 a.m., the deceased aged 14 years at the time approached the accused who was his uncle and demanded his inheritance being cows that belonged to his late father. He wanted to sell the cows in order to buy food for himself and his mother who had been inherited by the accused after the death of the deceased's father.



4. The accused person declined and a fight ensued between the two. The accused was seen by his wives chasing the deceased while the deceased was screaming for help. The accused caught up with the deceased, grabbed a pokot walking stick which had a steel nob belonging to the deceased and hit him three times on the head. The deceased fell down on realizing that the deceased had passed on, the accused together with one Lopeto carried his body and buried him in the forest.
5. The next day the deceased could not be found in the compound prompting a search by the family members. The incident was reported to the area chief and thereafter the police. With the help of the villagers, the burial place of the deceased was discovered on the 19th of March, 2020 and the body was exhumed on 22nd March, 2020. Blood-stained walking stick was recovered alongside the deceased's body. At the time of discovery, the body had started decaying.
6. The body was taken to Nakuru Hospital for preservation and postmortem analysis which was done on the 7th of April, 2020 by Dr. Titus Ngulungu. He formed an opinion that the cause of the death was as a result of head injury due to blunt object trauma evidenced by depressed skull on the temporal area.
7. The police file was compiled and the accused arraigned before court and charged with the offence of murder now reduced to manslaughter following plea bargain.

Pre-sentence report

8. The court directed that a pre-sentence report be prepared and filed by the probation officer. It was filed on 11th day of June, 2023. The report indicate that the accused is 44 years old and he did not attend school. He is a livestock trader in Olmorami and Lomuruti auction centres respectively. He has two wives and is blessed with 8 children from both wives. From the report, traditional dispute resolution called Lapai has been undertaken and his animals have been taken together with that of close relatives to compensate the family of the deceased.
9. The deceased's close family members are opposed to non-custodial sentence for the accused. The accused's extended family members are also divided on the opinion. The report show that the deceased was a nephew to the accused. One of the accused's wives and the local administration are of the opinion that the offender be handed custodial sentence for fear of reprisal from the other family members; she fears for the safety of the accused for revenge in pokot land is very common in such cases.

Mitigation

10. The defence counsel Mr. Mwaita mitigated on his behalf. He submitted that the accused is remorseful, he seeks forgiveness from the Honourable court and he has sent his family members to ask for forgiveness from the deceased's family and prayed for a non-custodial sentence for the accused and if his request is accepted by this court, he has his other residence in Laikipia where he can relocate to if there is fear for his security. He stated that the accused is a first offender and has been in custody since March, 2020 when he was arrested and urged this court to consider the 3 years he has been in custody when passing the sentence.

Determination

11. Under section 205 of the *Penal Code*, a person convicted of the offence of Manslaughter is liable to imprisonment for life. The court however has discretion to impose a lesser sentence depending on circumstances of each case. Among the factors to be considered include weapons used to inflict injuries leading to death and how the injuries were inflicted, relationship of accused to deceased and provocation among others.



12. In the instant case, the deceased who was a nephew to the accused was trying to demand his inheritance from accused who had inherited his mother to enable him provide for his family together with his mother but his demand was not received well by the accused. Being an adult, the accused was expected to act maturely to resolve the issue amicably with his 14-year-old nephew. Besides using excessive force on the deceased who was a minor, the accused went ahead to conceal his death by burying him secretly.
13. I however note that the accused is remorseful and his family have compensated the deceased's family and are now awaiting cleansing and final compensation. However, despite the compensation having been done, there is still fear among the accused's family and part of the extended family that it may not be safe to release the accused on probation. In my view, there is also need for accused to be rehabilitated by taking him through anger management process. I take note of the fact that the accused's action was not premeditated, that he is remorseful and I am inclined to impose lenient custodial sentence. I also take note of the period accused has been in custody.

Final orders

14. Accused to serve 10 years imprisonment.
15. Period served in remand to be reduced from sentence imposed under order 1 above.

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

.....

RACHEL NGETICH

JUDGE

In the presence of:

Mr. Kemboi - Court Assistant.

Accused present.

Mr Mwaita for accused.

Ms Ratemo for State.

