



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Republic v Kandie (Criminal Case 19 of 2019)
[2023] KEHC 23110 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 23110 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 19 OF 2019
RB NGETICH, J
SEPTEMBER 28, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

JACKSON KANDIE ACCUSED

RULING

1. The accused Jackson Kandie 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 15th day of September, 2019 at about 1830 hours at Kaplel village in Sacho –Mosop in Baringo central sub-county within Baringo County the accused murdered Japhet Kipkemoi Kiprop.
2. The charge and its full particulars were read over and explained to the accused who pleaded not guilty and the matter was set down for full hearing. However, when the matter came up for mention before this court on the March 6, 2023, the defence counsel Mr Chebii informed the court that his client the accused herein was proposing plea bargain hence the court fixed the matter for mention on the April 17, 2023 to confirm the position on plea bargaining.
3. On June 12, 2023, the charge was reduced to manslaughter following a plea bargain agreement. The lesser charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code* charge and its particulars were read over and explained to the accused who pleaded guilty and he was convicted on his own plea of guilty.

Brief facts of the Case

4. The facts surrounding the case are that on the September 15, 2019 at about 1830hrs, the accused herein Jackson Kandie reported that he was at his homestead within Kaplel village together with his two friends namely Samson Kiptui Kiprop and Saulo Kibet Konga taking busaa and after some minutes, the deceased who appeared slightly drunk also arrived at the homestead of the accused and sat next to



Samson Kiptui Kiprop who is the deceased's step-brother and they continued taking the local brew when the accused asked the deceased to leave his homestead because the deceased had already caused the death of another villager back in September, 2018. The accused's utterances did not resonate well with the deceased leading to a fight. The accused took a piece of wood and hit the deceased on the head occasioning him injuries on the forehead which made him collapse instantly.

5. The accused then send away Samson Kiptui and Saulo Kibet from his homestead and went back to his house. A group of people who heard noises came to the scene later and found the body of the deceased lying in a pool of blood. Alfred Suwai who was at the scene immediately called the area Assistant Chief Joshua Matini who went to accused's compound together with others and found the body of the deceased lying in a pool of blood.
6. Police officers visited the scene upon being called and collected two pieces of wood that are believed to be the murder weapons. The body was removed to Baringo Referral Mortuary for post mortem and the accused was arrested and escorted to Kabarnet police station.
7. Postmortem was conducted on the September 24, 2019 at Baringo County Referral Hospital Mortuary and the cause of death was concluded by the pathologist as internal hemorrhage secondary to head injury.
8. Police file was compiled and the accused arraigned before court and charged with the offence of murder now reduced to manslaughter following plea bargain agreement.

Pre-sentence Report

9. The court directed that a pre-sentence report be filed and the same was filed on the July 4, 2023. From the report, the accused is 46 years old, he is married and blessed with five children who are currently in school and prior to the commission of the offence, he had been engaging in casual jobs to earn a living for his family.
10. The accused admits the charge and pleads for forgiveness. He regrets the incident; he pleads for community-based correction so as to be reunited with his family and seek reconciliation with the deceased's family. From the report, the immediate neighbors' and the local administration described the accused as a violent person known to attack with no provocation. They described several instances of offender's anti-social conduct where he has served custodial sentence for violently attacking the area assistant chief. They indicated that there are no reconciliatory talks between the two families and are apprehensive of the safety of the accused should he be released to the community at the moment.
11. The deceased's family vehemently opposed the rehabilitation of the accused within the community. They are opposed to the decision to reduce the offender's case from murder to manslaughter arguing that they were not involved in the deliberations as a family. Probation officer is of the view that this is not a suitable case for a community-based correction given the negative sentiments as attested by the community and the deceased's relatives coupled with the accused's criminal history and the absence of the reconciliatory talks.

Mitigation

12. The defence counsel Mr Chebii mitigated on behalf of the accused and informed the court that the accused is remorseful for causing the death of the deceased, that the accused was provoked beyond human control, that there is element of extreme provocation and self defence in this matter. He submitted that the accused is married and blessed with 5 children, he is the sole bread winner of the



family. Counsel sought lenient sentence; he submitted that he is aware that the accused had a previous conviction but that notwithstanding, he is now reformed.

13. The state counsel Ms Ratemo submitted that the deceased was 29 years old and had 3 children and at the time of his death, the first born was 5 years old and the last born was below one year. That the deceased was also the sole bread winner of his family.
14. The state counsel further submitted that the accused had a previous conviction for the offence of assault and was released during sentence review exercise to decongest the prison; that he was to serve on community service order (CSO) at Kaplel primary school but he absconded and based on the circumstances of the offence, it is quite visible that accused never reformed and still has a challenge controlling his anger. She proposed sentence of not less than 10 years imprisonment and cited the case of *Republic v Maxton Omondi* 2021eKLR in support of her submissions.

Determination

15. Under section 205 of the *Penal Code* a person convicted of Manslaughter is liable to imprisonment for life. The court however has discretion to impose a lesser sentence depending on circumstances of each case. Factors to be considered while exercising discretion include nature of weapon used, how injuries were inflicted, views of community, local administration and victim's family among others.
16. I take note of the fact that an altercation ensued between the deceased and the accused in the accused's homestead while both the deceased were drunk. It is the accused who initiated the quarrel by asking the deceased to leave his homestead on allegation of having murdered someone before. Both were not able to control their anger. The crime was committed at the heat of the moment. The accused had not planned to kill the deceased but he provoked the deceased to a fight and in the process of fight, the accused inflicted fatal injuries to the deceased.
17. From the facts of the case and presentence report by Probation Officer, the accused has difficulties in anger management and the short period he served for previous offence did not serve to rehabilitate him. He has not also made any efforts to reconcile with the deceased's family. In my view, custodial sentence will be appropriate for the accused as it will assist him in gaining skills of anger management and ways of earning a living to support his family and stop engaging in illicit brew which lead to illegal activities. I also take note of the fact that the accused is a repeat offender.
18. In view of the fact that the accused has been in custody since 2019 while awaiting his trial I will impose sentence of 12 years imprisonment.
19. Final orders:-
 1. Accused to serve 12 years imprisonment.
 2. Period served in remand to be reduced from the sentence in order 1 above.
 3. Right of appeal 14 days.

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

.....

RACHEL NGETICH

JUDGE

In the presence of:



Mr. Kemboi - Court Assistant.

Ms Rateemo for State.

Accused present.

Mr. Chebii for Accused.

