



**Republic v Komen (Criminal Case E018 of 2021)  
[2023] KEHC 23111 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 23111 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE E018 OF 2021  
RB NGETICH, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JONAH RERIMOI KOMEN ..... ACCUSED**

**RULING**

1. The accused Jonah Rerimoi Komen had been charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the charge being that on the 19<sup>th</sup> day of April, 2021, at Kamuma village, Kisonei location in Baringo County the accused willfully and unlawfully murdered Dickson Nge'tich Kipkech.
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 me on the April 27, 2023, the defence counsel Mr. Kiptoo informed the court that he had prepared a formal application for plea bargaining and were awaiting a response from the office of Director of Public Prosecutions. The matter was fixed for mention on the May 24, 2023.
3. On June 14, 2023 plea agreement was duly executed. The charge was reduced to manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. The charge and its particulars were read over and explained to the accused who pleaded guilty and was convicted on his own plea of guilty.

**Brief Facts Of The Offence**

4. The facts surrounding the offence are that the accused herein and the deceased who was his uncle have had differences dating back to 2014 and on the material day, the accused arrived home from taking illicit brew at Kamuma village and found his sons Evans Ayabei Komen, Evans Kiprono Kipkemoi and Emmanuel Koech who were having lunch in the kitchen. The accused herein in a shade within the homestead.



5. The deceased arrived to borrow pieces of hot charcoal so that he could light fire in his house. The deceased inquired from accused's son Evans when the iron steel (Tarimbo) that they had lent the school would be brought back. The accused overheard the conversation and asked the deceased why he had formed the habit of asking for the Tarimbo as if he is the one who gave it out. A quarrel ensued between the two which quickly escalated and the accused picked a mattock that was lying in the compound and hit the deceased severally on his head breaking his skull. The deceased fell down with blood oozing from his head.
6. The accused's son and the 2 others who witnessed the incident started to scream for help. Evans Ayabei Komen had his father's mobile phone which he used to call his uncle one Josephat Bundotich who called a relative Philip Rono to go and check what was happening. Philip informed his neighbor Benson Katam and together they ran towards accused's home where they found a group of people who had gathered. The deceased was lying on the ground and accused seated on a bench next to him.
7. They tried to perform first aid on the deceased and later took him to hospital where he was confirmed death on arrival at Mogorwo Health centre. The body was transported to Baringo County referral Hospital mortuary. The accused was escorted by Moses Korir who was the Nyumba Kumi elder to the chief's office and later to Tenges Police station.
8. On April 29, 2020 Postmortem was conducted at Baringo County Referral Hospital by Dr. Nancy Kemuma who ascertained the cause of death to be internal bleeding due to head injuries. Investigations commenced and the police file was compiled. The accused was arraigned before court and charged with the offence of murder contrary to section 203 as read with section 204 of the penal code now reduced to offence of Manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#) following plea bargain.

### **Pre-sentence Report**

9. The court directed that a pre-sentence report be filed and the same was filed on the July 11, 2023. From the report, the accused was born in the year 1968. He trained at National Youth service for a period of 6 months after doing KCPE and started a second-hand clothes business thereafter; he is married and blessed with 5 children.
10. The accused is remorseful for committing the offence and says he was under medication for mental illness which had been diagnosed before and he regained mental stability after killing his uncle. He seeks forgiveness from his family and court; he prays for leniency and urged the court to consider giving him a non-custodial sentence.
11. The entire extended family have stated that as a family they have deliberated on the matter and they do not object to the offender's request for non-custodial sentence but will respect whichever sentence the honourable court will pass.
12. The local administration stated that the family did not involve them during their discussions about the matter but having some background information about the accused, they do not object a non-custodial sentence for the accused.
13. The probation officer recommends that the accused be sentenced to serve 3 years' probation term subject to the honourable court's discretion.



## Mitigation

14. The defence counsel Mr. Kiptoon mitigated on behalf of the accused. He submitted that the accused is a man aged 55 years old and at the time of his arrest on April 19, 2021, he had 5 children 3 being school going, one in secondary school and the others in primary school but all dropped out of school immediately after his arrest and the wife abandoned the children.
15. Counsel further submitted that the accused was a sole breadwinner prior to his arrest; that he regrets having committed the offence and he had history of mental illness as confirmed by presentence report; that due to mental illness, he learnt that he had committed the offence while at the police station. He regrets the incident and said his family and that of the deceased have reconciled; sthey are ready to receive him back into the community. He prayed for a lenient sentence and for the court to consider the time he has been in remand since April 19, 2021; further that he is a first offender and is remorseful.

## Determination

16. 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.
17. I take note of the fact that the accused is a first offender and that he has had history of mental illness. He is a young man in need of treatment, care and protection. Both his family and deceased's family have reconciled and are willing to accept him back into the community. The local administration is not also opposed to accused being released to serve sentence while in the community. I will therefore impose a non-custodial sentence.
18. Final Orders: -  
Accused to serve 3 years' probation sentence.

**RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 28<sup>TH</sup> DAY  
SEPTEMBER 2023**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Mr. Kemboi - Court Assistant.

Ms Ratemo for State.

Mr Kiptoo for accused.

