



REPUBLIC OF KENYA



**Republic v Kamau (Criminal Case E005 of 2021)
[2023] KEHC 24717 (KLR) (31 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24717 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE E005 OF 2021
RM MWONGO, J
OCTOBER 31, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

DENNIS KARANI KAMAU ACCUSED

JUDGMENT

1. The Accused is charged with the Murder of his uncle Martin Maina on 8th February, 2021. On 31st March, 2021 he pleaded not guilty to the offence. However, on 16th May, 2022 the defence proposed a plea bargain agreement. The matter was given a date for Plea Bargain Agreement settlement on 5th October, 2022 to give the parties time to consider the proposal.
2. On 9th March, 2023, the parties availed the signed Plea Agreement pursuant to Section 137A (i) and 137B of the *Criminal Procedure Code*.
3. The Plea Bargain Agreement which was dated 5th February, 2023, was adopted by the court pursuant to Section 137G of the *Criminal Procedure Code*. Further, the court stated it was satisfied that the accused had understood the contents and that he had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion. Accordingly, the court convicted the accused with the offence of manslaughter contrary to Section 202 of the *Penal Code*.
3. Since the hearing did not proceed the facts of the case are stated in the PBA. Briefly, they are as follows. That on 5th January, 2021, at about 20.00 hours, the deceased (who is an uncle of the accused) and the accused had been drinking together. On their way home, an argument ensued on payment for the boda boda ride. The accused demanded Kshs.100/= while the deceased had only Kshs.50/=. The accused began to beat the deceased saying “Leta pesa yangu”. He pushed down the deceased and who hit a rock. The accused left the deceased and returned to his local drinking den. The deceased walked home, and on reaching, his mother took him to Kerugoya Hospital where he succumbed 8 days later.



5. The accused was arrested by the area Chief and the village Headman and taken to Mutithi Police Post on 14th January, 2021. The post-mortem report dated 19th January, 2021 indicate that he died due to severe head injury following assault with blunt objects.
6. The PBA having been adopted the court thereby convicted the accused for manslaughter on 9th March, 2023. The Pre-Sentence Probation Report had been filed hence the matter was set for mitigation on 5th June, 2023.
7. The defence counsel made the following submissions on mitigation. He submitted that the accused was a 1st offender and is remorseful. He is the first born in his family and pleads for a non-custodial sentence. He has been in prison for 2 years and is reformed. His family is receptive to his release from prison. Further, the probation report is favourable. They prayed for a non-custodial sentence.
8. The prosecution submitted that the deceased was a pillion passenger, who had an argument with his nephew over Kshs.100/=. The accused has been undergoing rehabilitation while in prison, and should be placed on a program for anger management.
9. The only issue for determination is whether the sentence of two (2) years proposed by the state in the Plea Bargain Agreement should be adopted.

Analysis and Determination

10. The Probation Report indicates that the accused is 24 years of age. He is the first born of the family and has two siblings, one in high school and the other in primary school. The accused dropped out of school in form one due to poverty and began engaging in unskilled casual jobs. He is not married and does not have children.
11. The Report adds that accused is not viewed as a threat to the community and is not likely to be harmed by members of the public should he be released. He has a supportive family that is willing to assist him reintegrate into the community. The victim was his uncle whom he had interacted with since childhood with no history of fighting. According to the Probation Report, there were no compelling social reasons found to disqualify him for a non-custodial sentence. The Probation Report thus recommended the accused for a non-custodial sentence and community service order to be served at St Peter's Mwea Mixed Secondary School.
12. The applicable law on sentence for the offence of manslaughter is found under the provisions of Section 205 of the *Penal Code* which reads as follows:

“ Any person who commits the felony of manslaughter is liable to imprisonment for life”.
13. The section provides for the maximum sentence that is life imprisonment. This court has taken into consideration the aggravating circumstances in that the convict killed the victim by hitting him on the head with a blunt object. A critical look at the evidence shows that the accused got into a fight with the deceased with the aim of recovering Kshs.100/= owed to him for the boda boda ride. The deceased died eight days later. Whilst the accused ought to be held liable for the consequences of his action there is no clear evidence that he intended to murder the deceased.
14. The Supreme Court decision in the case of *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR provided the mitigating circumstances to be considered before sentencing. The case held that;

In sentencing the court will consider mitigating factors such as the following:

- a. Age of the offender;



- b. Being a first offender;
- c. Whether the offender pleaded guilty;
- d. Character and record of the offender;
- e. Commission of the offence in response to gender-based violence;
- f. The manner in which the offence was committed on the victim;
- g. The physical and psychological effect of the offence on the victim's family;
- h. Remorsefulness of the offender;
- i. The possibility of reform and social re-adaptation of the offender;
- j. Any other factor that the Court considers relevant.

15. Taking into consideration the above sentencing guidelines and the Probation Report which recommended for a non-custodial sentence, the accused satisfies the criteria for a reduced sentence from the maximum life imprisonment.

Disposition

16.

- a) In the light of the foregoing, the Court hereby sentences the Accused to a term of seven (7) years imprisonment. Of these the Accused would be entitled to remission under the *Prisons Act* of 1/3 of his sentence term which would leave a balance of 4 years and 8 months. Of this balance, the accused has served 2 years leaving a balance of 2 years and 8 months to be served.
- b) The accused shall serve the balance of his sentence term in non-custodial service and shall be engaged in community service at St. Peters Mwea Mixed Secondary School in a programme designed by the Probation Officer.
- c) Should the Accused fall afoul of the law and be convicted for any offence, the non-custodial sentence shall automatically be revoked and reviewed and the Accused shall instead serve a custodial sentence of five (5) years.

17. Orders accordingly.

DATED AT KERUGOYA THIS 31ST DAY OF OCTOBER, 2023

.....

R. MWONGO

JUDGE

Delivered in the presence of:

- 1. Maari for the state
- 2. Magara for Accused
- 3. Accused Present in Person
- 4. Court Assistant, Murage

