



**Republic v Kangwony (Criminal Case E023 of 2022)
[2023] KEHC 24263 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24263 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E023 OF 2022
RB NGETICH, J
OCTOBER 26, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

FELIX CHERUTICH KANGWONY ACCUSED

RULING

1. The accused Felix Cherutich Kangwony 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 20th day of November, 2022 at around 1600 hours at Kabarsongwo village, Kapkoiwa Sub-location, Kipkata Location in Baringo North sub-county within Baringo County the accused jointly with another not before court murdered Evans Cheptumo Kangwony.
2. The charge was read over to the accused who denied the charge and the matter was set down for full hearing. However, when the matter came up for mention before Justice H.K Chemitei on the 24th November, 2022, Mr. Kiptoo acting for the accused informed the court that he had seen the facts of the case and had opportunity to talk with the accused and were of the view that they pursue plea bargaining and will do a formal application for the same which issue was not objected to by the prosecution.
3. On the 12th July, 2023 the plea agreement was duly executed; the charge was reduced to manslaughter and on the 18th day of July, 2023, the charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code and its particulars was read over and explained to the accused who pleaded guilty and was convicted on his own plea of guilty.

Brief Fact Of The Offence

4. The facts surrounding the case are that on the 20th day of November, 2022 at about 1600 Hours in Kabarsongwo village, Kipkata Location in Baringo North sub-county within Baringo County, the



deceased and the accused who are brothers picked a quarrel that ended up to a fight and in the process, the accused hit the deceased with a blunt object. Sharon Cheptoo, a young girl who saw the two brothers fighting rushed and informed Japhet Kangwony who went to the scene and found the accused herein standing while his brother the deceased herein was lying dead on the ground.

1. The accused admitted that he had killed his brother and Japhet advised him to calm down as he helps to solve the matter. The accused left the scene and presented himself at Police station where he found Pc Mark Odhiambo a police officer at the said station; he introduced himself and confessed again before the police officer that he had killed his brother. He led police officers to the scene where they found the deceased lying on the ground and blood oozing from his body. The area chief informed the police officers from Kabrtonjo police station about the incident. They visited and processed the scene; and moved the body of the deceased to Baringo referral Hospital mortuary for postmortem. The accused was arrested and escorted to Kabarnet Police station.
6. On the 26th day of November, 2022 at about 12hours Dr. Mumo performed postmortem on the body of the deceased herein and formed opinion that the deceased died due to severe head injury caused by a blunt object which caused hemorrhage. Police file was compiled and the accused arraigned before court for a charge of murder now reduced to manslaughter following plea bargain.

Pre-sentence Report

7. The court called for presentence report which was filed on the 19th September, 2023. From the report, the accused had formal education up to class 8. He did not proceed to secondary school due to lack of school fees. He engaged in casual jobs between the year 2012 and 2021 when he was employed at Eldoret at Mediheal Hospital as a house keeper and at the time of his arrest, he was still working at Mediheal. He is married to one Josephine Komen and are blessed with 2 children aged 1 ½ years old and 5 months.
8. The accused admits the offence as charged. He states that he is remorseful and prays for a non-custodial sentence so that he can take care of his family. He states that he will undergo cleansing to avoid further conflict within the family as he seeks total forgiveness from his relatives.
9. The accused's family indicated that as a family, they have discussed the matter and they resolved to forgive the accused on the ground that they have already lost one brother through the unfortunate incident and they do not wish to lose another brother through incarceration. Their prayer is to have the accused sentenced to non-custodial sentence so that he can take care of his children and continue making positive contributions to the family.
10. The local administration describes both the accused and the deceased as being alcoholics and said their mother passed on while the two were still young which led to parental gaps as the two brothers were growing up leading to a defiant behavior including alcoholism. The local administration say they are aware of the family's decision to forgive the accused and agree with the family that the accused can be sentenced to serve non-custodial sentence.
11. The probation officer notes that the entire family has resolved to forgive the accused and there is no more animosity and also that the local administration and the community are ready and willing to accept the accused back in the community. The officer's states that the accused is therefore suitable for rehabilitation within the community and he recommends that he be sentenced to serve 3 years' probation whereby during this period, he will undergo counselling on substance abuse and conflict management subject however to courts discretion.



Mitigation

12. The defence counsel Mr. Kiptoo mitigated on behalf of accused. He submitted that the accused is a young man about 30 years old and on the fateful day, the accused together with his two brothers one being the accused were enjoying themselves when they got drunk. At about 4 p.m, the accused left them at the drinking den and shortly thereafter there were screams emanating from the drinking den and on arrival, he found the deceased with a panga ready to stab his other brother namely Japheth. In the process the accused who had a stick intervened; the deceased wanted to stab him but he used the stick he had to protect himself from being cut with a panga by the deceased. Unfortunately, the deceased succumbed to the injuries sustained after being hit with a stick by the accused.
13. Counsel submitted that there was no grudge between the deceased and the accused who are blood brothers; that the accused regrets the entire incident which has tormented him. He submitted that the accused had a wife who was pregnant at the time of the arrest and who has since delivered and other children too. That the accused was a sole bread winner, he is a first offender and he is praying for a non-custodial sentence so that he can continue being productive member of the society. Counsel urged the court to consider the period the accused has been in remand since November, 2022.
14. The state counsel Ms Ratemo submitted that she has perused pre-sentence report and had a chance to discuss with the family prior to plea bargaining agreement. She stated that there are minutes also which were filed concerning the meeting by the family and that she leaves the aspect of sentence to the court to determine.

Determination

15. Under section 205 of the Penal Code a person convicted of Manslaughter is liable to imprisonment for life. Life sentence was however declared unconstitutional by the court of appeal in the case of Malindi Court of Appeal Criminal Appeal No. 12 of 2021, Julius Kitsao Manyeso Versus Republic. The court has discretion to impose a lesser sentence depending on circumstances of each case.
16. I take note of the fact that accused is aged 30 years old. He is a first offender and is a brother to the deceased. His family which is also deceased's family have agreed to forgive him and are of the view that if accused is incarcerated, it will be double loss to the family. The accused will not however escape the psychological torture of having taken away the life of his brother. The accused will live with the guilt of taking away the life of his brother. I take note of the fact that accused has been in prison for a period of one year.
17. In view of the sentiments of the family and local administration, I am inclined to impose a non-custodial sentence.

Final Orders: -

18. ...
 1. Accused placed on probation for a period of 3 years.
 2. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 26TH DAY OF OCTOBER 2023.

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RACHEL NGETICH



JUDGE

In the presence of:

Mr. Elvis & Mr. Momanyi – Court Assistants.

Accused present.

Ms Ratemo for State.

Mr. Kiptoo for Accused.

