



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kirgoty (Criminal Case 1 of 2018)
[2023] KEHC 26120 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 26120 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 1 OF 2018
RB NGETICH, J
NOVEMBER 30, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

ORLANDO KIRGOTY ACCUSED

RULING

1. The accused Orlando Kirgoty was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence being that on or about the 30th December, 2017, at Salabani Sub-location in Baringo South Sub- County within Baringo County, murdered Naleyoy Lekirigoti.
2. By the Judgement delivered on the 25th day of October,2023, convict herein was convicted of the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*. The particulars of the charge were that on the 30th day of December,2017 at Salabani sub-location in Baringo South Sub- County within Baringo County the accused unlawfully caused the death of Naleyoy Lekirigoti. The court called for presentence report to assist in determining appropriate sentence.

Presentence Report

3. Presentence report was filed on the 16th November, 2023. It indicates that the offender is the 5th born child out of the 6 children of Neine Kirgoty and the late Naleyoy Kirgot (victim). He has 5 siblings from his mother and 4 other step siblings as the offender's father (victim) had 2 wives.
4. Social inquiry reveal that the family is close knit with the siblings being close with each other apart from the offender and this is as a result of the offender being troublesome within the family and within the



community. From the report, the siblings have tried to help him severally but the offender still engaged in crime especially theft which social inquiry shows was to fund his drinking habit.

5. The offender had formal education up to class 7 where he then dropped out claiming that he was to look after the family cattle. After dropping out of school, he engaged in farming. The offender is married to one Mary Kirgoty and they are blessed with 4 children and 2 other children from a past relationship who live with their uncle after their mother passed on although other family members claim they are not aware of this.
6. The offender pleads for leniency from the court stating that he regrets his actions. He seeks forgiveness from the family at large and prays for a non-custodial sentence saying it would allow him to take care of his children who he believes are suffering without him. He however had not yet sought forgiveness formally from the other family members. The offender admits that he has been incarcerated before for stealing stock.
7. Social inquiry revealed that the convict became deviant after dropping out of school and has moved to several towns in the country while engaging in casual labor until later when he returned home and married; that the offender's marriage is marred with domestic violence with the offender forming a habit of assaulting his wife when under the influence of alcohol and the offender would often use his money on alcohol and tobacco forcing his brothers to provide for the offender's wife and children.
8. The local administration said the offender is well known to them as a drunkard and a violent person and they do suspect that he used to abuse other substances as well. The local administration disclosed that the offender had several cases solved through ADR in the community including one of stealing stock but the offender never learnt since he was later arrested again for stealing stock and was brought to court, convicted and he served a prison sentence and despite going through the ADR and judicial process, the offender never changed his ways.
9. They added that the offender's actions shocked the entire community and the community especially the immediate family members are yet to forgive the offender and coupled with the fact that the offender has previous criminal records and has been through ADR severally, they oppose a non-custodial sentence; they are of the view that custodial sentence would guarantee the offender's safety since if released the members of the community may harm him as he is viewed as a threat.
10. The elder brothers of the offender gave the family sentiments. They indicated that the offender has had a history of violence and drug and alcohol abuse and the family is still shocked at the way the offender killed the victim. That the victim had invited them for a party and according to them the offender had no reason to act the way he did and despite the issue of money arising, to them the offender should have simply responded to the victim and left it at that. The extent to which the offender cut the victim still leaves them in shock.
11. They further added that during the hearing of the case, since it is the family members who were the key witness, the offender would be angry that they came to testify against him and he would threaten some of them that one day he would be free and he would harm them for testifying. Overall, they indicate that as a family they are not yet willing to accept the offender back home. They cite his history of violence, alcohol and tobacco abuse and state that they have done so much over the years to help the offender to change, from helping resolve some of his crimes at home through ADR, to pushing him to go back to school and even helping resolve domestic conflict between the offender and his wife. They said one of the cousins had given the offender money to build a house, the offender killed the victim for asking about the money. They say they have had enough and they are not willing to welcome the offender back home. They call for incarceration adding that they do not take the offender's threats lightly.



12. The Probation Officer states that the offender admits being imprisoned at Kapenguria prison for stealing stock and he was sentenced by Hon Temu. The community at large describe him as a violent man who over indulges in alcohol and tobacco. The violence has made him to be feared in the community and members are not yet willing to welcome him back. His view is that the offender is not suitable for a non-custodial sentence and recommends that he be dealt with otherwise.
13. In mitigation, the defence counsel Mr Chebii submitted that the accused is remorseful for causing the death of his father; he submitted that the convict is a first offender and is asking for lenient custodial sentence. That he has been in custody since 2017 a period of 6 years. He is the bread winner of his family and he requires leniency in sentencing to enable him come back to the society later on. Counsel submitted that the pre-sentence report is not favorable to the accused that is why he is asking for a lenient custodial sentence.

Determination

14. The sentence prescribed for the offence of manslaughter is life imprisonment. However, life sentence was declared unconstitutional in Malindi Court of Appeal Criminal Appeal No 12 of 2021, *Julius Kitsao Manyeso Versus Republic*. In view of the above, the courts have discretion to impose determinate sentence depending on circumstances of each case.
15. Under sentence policy guidelines, one of the objectives for sentencing is rehabilitation and the other is retribution. The society would want to see an offender punished for his conduct and in the process, other would be offenders are also deterred from committing similar offence. The community will also be protected by incapacitating the offender by keeping him away from the community to avoid reoffending.
16. In in deciding appropriate sentence, the court is required to consider factors which include Gravity of the offence, Criminal history of the offender, Character of the offender, Protection of the community and Offender's responsibility to third parties.
17. I have considered the fact that accused's age, the family background and what led to the unlawful killing and the manner in which he caused the death of his father and also the fact that he is said to be remorseful. There is no doubt that accused's overindulgence with alcohol placed him in the wrong side of the law. There is also no doubt that the accused require custodial sentence so as to benefit from reform programs in prison. Custodial sentence will give opportunity to the family to heal and for community to see that the accused wrong conduct by the offender has been punished. Conduct such as his is not welcome in the society. I take note of the fact that accused has been in custody for since his arrest on 30/12/2017 a period of 6 years. This period to be reduced from sentence under section 333(2) of the *CPC*.
17. Final orders:-
 1. Accused to serve 25 years imprisonment.
 2. Period served in remand to be reduced from sentence.
 3. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 30TH DAY OF NOVEMBER, 2023.

RACHEL NGETICH

JUDGE



In the presence of:

Mr. Chebii for accused.

Accused present.

