



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Rono (Criminal Case E014 of 2022)
[2023] KEHC 26303 (KLR) (30 November 2023) (Judgment)**

Neutral citation: [2023] KEHC 26303 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE E014 OF 2022
RL KORIR, J
NOVEMBER 30, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

DAVID RONO ACCUSED

JUDGMENT

1. David Rono (Accused) 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 were that on 30th May 2022 at Yakanek village in Sotik Sub-County within Bomet County, the Accused murdered Wesley Kipngetich.
2. The Accused took plea on 16th June 2022 he pleaded not guilty to the offence and a date for pre-trial directions was set.
3. The matter proceeded for hearing on 7th November 2022 when Joan Chebet Rono (PW1) testified. When PW1 completed her testimony, the learned counsel for the Accused, Mr. Leteipa informed the court that the Accused wished to plea bargain with the Prosecution. The trial was consequently adjourned to allow the parties time to enter into plea negotiations.
4. Subsequently a Plea Bargaining Agreement dated 23rd March 2023 was filed on the same date. It indicated that the Accused had voluntarily agreed to plead guilty to the lesser offence of manslaughter.
5. This court accepted the Plea Agreement after satisfying itself that the Accused understood his trial rights and had signed the Plea Agreement voluntarily.
6. On 24th May, 2023, the Accused took plea for the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. He accepted the charge. The Prosecution however, was not ready with the facts of the case and plea was subsequently deferred.



7. On 15th June, 2023, the learned Prosecution Counsel, Mr. Njeru read the following facts as captured in the Plea Agreement:-

“On 30th May, 2022, the family of the deceased Wesley Kipngetch was harvesting potatoes in their farm. The produce belonged to the Accused David Ron who was the deceased’s elder brother. It is then that the Accused arrived carrying a basket and took away some potatoes.

The deceased was not amused with this and asked the Accused why he had a habit of exchanging family property for alcoholic brews. The Accused replied that the potatoes belonged to him and he could do with it as he pleased. An argument arose between the brothers but eventually the Accused left.

Later, the Accused came back home while inebriated and found the deceased tending to his flower bed. The deceased further confronted the Accused about battering his potatoes for alcohol. The quarrel escalated into a fierce battle between the brothers and the Accused picked a garden hoe with which he hacked the deceased.

The family and neighbors were attracted by the battle cries and rushed to the scene only to find the deceased bleeding profusely. Attempts to administer first aid on him were fruitless and he died before he could receive medical attention. His body was taken to the morgue where post mortem examination revealed that he died of severe head and chest injuries. The Accused was also arrested at the scene and later charged with murder. He was examined and found to be free of mental illness.

The deceased’s wife, Joan Chebet testified before this court and confirmed the above facts. She confirmed that the family had met, reconciled, forgiven the Accused and are ready to accept him back home. All other witnesses who are close family members have also confirmed these facts in their statements.

The state accepts that the two brothers had a domestic quarrel which was exacerbated by the Accused’s drunkenness. We also accept that he was not in his right sense when he killed his brother”.

8. The Accused stated that the facts were true and the court convicted him on his own guilty plea. The court further called for a Pre-Sentence Probation Officer’s Report and scheduled a sentence hearing.
9. The Pre-Sentence Report dated 6th June 2023 was filed on 7th June 2023. It stated that the Accused regretted his actions and asked this court for forgiveness and leniency in sentencing. The Report also stated that the mother of the Accused and the deceased did not want both her sons to perish one was now deceased while the other would be imprisoned. She had forgiven the Accused. The Report further stated that none of the other family members spoke ill against the Accused and that plans were in place to have the Accused relocated if he was released, to another neighborhood as per the Kipsigis traditions.
10. With respect to the deceased’s wife, Joan Rono she was reported to have suffered immense psychological and emotional trauma. That she was however in agreement with the rest of the family members in forgiving the Accused and having him resettled in another piece of land far away from the ancestral home.
11. The Community through the local administration backed the family’s call to forgive the accused.



12. The Accused filed extensive Submissions in mitigation through his learned counsel Mr. Leteipa on 27th June, 2023. Counsel restated Section 137 I of the Criminal Procedure Code which provides;
- 1) Upon conviction, the court may invite the parties to address it on the issue of sentencing in accordance with section 216.
 - (2) In passing a sentence, the court shall take into account—
 - (a) the period during which the accused person has been in custody;
 - (b) a victim impact statement, if any, made in accordance with section 329C;
 - (c) the stage in the proceedings at which the accused person indicated his intention to enter into a plea agreement and the circumstances in which this indication was given;
 - (d) the nature and amount of any restitution or compensation agreed to be made by the accused person.
 - (3) Where necessary and desirable, the court may in passing a sentence, take into account a probation officer's report.
13. Citing the case of Francis Muruatete & Another Vs. Republic, Petition No. 15 of 2015, Counsel drew the attention of the court to the mitigating factors to be considered by the court. He submitted that the Accused pleaded guilty to the offence of manslaughter and had saved the court precious time. That the Accused was remorseful and that he committed the offence unintentionally as he was drunk.
14. It was the Accused's submission that he was a first offender and had been in custody since his arraignment. That the court should consider the period he spent in remand. It was his further submission that he was capable of reform if he was handed a non-custodial sentence. He stated that he would enroll in anger management classes as part of his reform measures. He relied on *Republic vs Stanley Njau Kamau (2021)* eKLR.
15. On their part, the Prosecution relied on the Pre - Sentence Report. They submitted that the Accused entered into a plea agreement and saved judicial time. The Learned Prosecution Counsel also urged the court to consider that the Accused was a first offender and that the family who were also the immediate victims had forgiven him.
16. Sentencing serves multiple objectives as enumerated in the Judiciary Sentencing Policy Guidelines (2023). These include retribution, deterrence, rehabilitation, restorative justice, community protection and denunciation.
17. In sentencing the Accused, I am guided by the gravity of the offence, the circumstances of the case and the offender's personal circumstances. The court is also required by the Victims Act (2014) to take into consideration the views of the victims or the victim impact statement.
18. In *Jacob Kirimu Kabiru vs Republic (2010)* eKLR, the Court of Appeal held that: -
- “We believe that the restricted right of appeal where a bargain has been struck is to assist in speeding up the process and to attain finality at the earliest time possible. However, we note that the superior court even after realizing that the plea was based on a plea bargaining agreement did not consider the mandatory provisions of section 137 I (2) of the Criminal



Procedure Code and in particular, the need to take into account a victim impact statement.

In our view, such a victim impact statement would have been necessary.....”

19. I have considered the circumstances of the offence. The Accused and the deceased were blood brothers who fought when the Accused took potatoes from the deceased’s shamba to a drinking den to finance his drinking habit. They got into a heated scuffle and the Accused struck the deceased with a garden hoe causing him fatal injuries.
20. The Accused, no doubt is now repentant having reflected on his rash action. This case however demonstrates inability to resolve disputes peacefully without resorting to violence.
21. I have considered the Probation Report which advocated for a probation sentence. That the Accused’s family had forgiven the Accused and were amenable to him getting a non-custodial sentence after which they would relocate him somewhere else
22. As noted earlier, the victim in this case was of the same family as that of the Accused. The deceased’s wife agreed with the family’s decision to forgive the Accused and have him relocated elsewhere in the event of his release.
23. Having considered the Probation Report, the Accused’s family’s position in the matter and the victim’s statement, I am convinced that the Accused should serve a rehabilitative prison sentence and not a probationary one. This is so because it was evident that he needs to be rehabilitated from the alcoholism he suffered and be trained on anger management. He also requires skills to enable him earn a living upon release. As the family has already forgiven him and reconciled to the loss of their loved one, I shall impose a lenient prison term.
24. I have considered the Accused’s mitigation that he was a first offender and that he was remorseful. I have also considered the fact that he has saved this court judicial time.
25. The Accused is sentenced to serve 5 years’ imprisonment.
26. I have taken into consideration that the Accused has been in pre-trial custody. In accordance to section 333(2) of the [Criminal Procedure Code](#), the sentence shall run from 16th June 2022 being the day of his arrest and arraignment in court.
27. Orders accordingly.

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 30TH DAY OF NOVEMBER, 2023.

R. LAGAT-KORIR

JUDGE

Judgement delivered in the presence of Mr. Njeru for the State, Mr. Kenduiwo holding brief Mr. Leteipa for the Accused and Siele (Court Assistant)

