



**Republic v DLT alias DKT (Criminal Case 20 of 2019)
[2023] KEHC 27282 (KLR) (19 December 2023) (Sentence)**

Neutral citation: [2023] KEHC 27282 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL CASE 20 OF 2019
SN MUTUKU, J
DECEMBER 19, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

DLT ALIAS DKT ACCUSED

SENTENCE

1. Derrick Lerionka Tonkei Alias Derrick Kiarei Tonkei, the accused herein, was initially charged with murder contrary to section 203 as read with section 204 of the Penal Code. The offence is alleged to have been committed on November 30, 2019 at Zambia area within Ngong in Kajiado North Sub-County within Kajiado County where he unlawfully killed Joseph Mukinyo Kariuki. He pleaded not guilty to the charge of murder.
2. Before the trial commenced, the parties entered into a plea-bargaining agreement for the lesser offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. The particulars of the offence of manslaughter are similar to those of murder. The accused pleaded guilty to manslaughter.
3. The facts of the offence are that on 30th March, 2019 at around 1300hrs, Joseph Mukinyo Kariuki was washing utensils in his aunt's house at Zambia Estate within Ngong when a quarrel ensued between him and the accused. Present at the scene was Kevin Mune, Francis Salatation and Allan Slash Tonkei. The accused and the deceased were together cutting a piece of cloth into pieces. Kevin saw the deceased fall down and he rushed to him. Kevin noticed that the deceased had been stabbed on the neck with a knife. Kevin and Francis tried to administer first aid on the deceased who was bleeding from the neck. The accused escaped. The deceased died due to excessive bleeding.



4. Police from Ngong Police Station were informed, and they went to the scene and took the body to Kikuyu Mission Hospital Mortuary. The accused was later arrested and charged with murder which has been reduced to manslaughter.
5. The body of the deceased was examined on 4th December 2019. The cause of death was found to be excessive bleeding due to stab wound. The postmortem report was produced as an exhibit.
6. The accused admitted the facts as correct.
7. This court convicted the accused on his own plea of guilty and called for a pre-sentence report from the prosecution. The report was filed on 11th October 2023. I have read the report and noted its contents.
8. During mitigation hearing, Mr. Ogoma counsel for the accused, told the court that the act leading to the killing of the deceased was not intentional but resulted from an argument; that the accused had barely turned 18 years old at the time of the offence and that he has no previous criminal convictions; that subsequent to the commission of this offence he was charged in criminal case E1168/2013 in Ngong that the matter was however withdrawn under section 81 of the *Criminal Procedure Code*. Counsel submitted that the accused has been suffering from anxiety attacks following the committing of the offence; that he has been undergoing counselling and seeing a psychiatrist based in Ngong to help him cope with the consequences of the offence; that the deceased and the accused are maternal cousins and lived under the same roof; that the families have had meetings with the chief to cope with the situation and that there is no bad blood between them; that both families want the accused rehabilitated to society.
9. It was mitigated that the accused is remorseful and by agreeing to the plea agreement, he has shown willingness to take responsibility for his actions; that the accused be given a chance on probation with supervision of family psychiatrist in Ngong and a probation officer.
10. Ms Nyaroita for the prosecution submitted that at the time of the offence the accused was an adult; that he had been charged before with assault however the matter was withdrawn; that he was later charged with the offence herein. She submitted that the accused has anger issues that need to be controlled; that the probation report recommends a non- custodial sentence however the prosecution calls for custodial sentence and that the accused can be counselled and treated while in custody.
11. I have considered the circumstances of this case. I have noted that the accused seems to have anger issues and needs rehabilitation and counselling. By pleading to manslaughter, the accused has saved judicial time. However, a life was lost and cannot be brought back. In view of the circumstances of this case, it is my considered view that the accused will benefit from both custodial and non-custodial sentence. Consequently, I sentence the accused to serve 18 months in custody after which he will be placed under the supervision of probation officer for 2 years. He will also be placed under the care of a clinical counselling to get help on how to deal with anger issues.
12. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 19TH DECEMBER 2023.

S. N. MUTUKU

JUDGE

