



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CRIMINAL CASE NUMBER 39 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**KEVIN KIPNGENO TUWEI.....ACCUSED**

**SENTENCE - RULING**

1. The accused person, **Kevin Kipngeno Tuwei**, was originally charged with **Murder contrary to section 203 as read together with section 204 of the Penal Code**. The particulars of the charge were that on 19<sup>th</sup> July, 2018 at Kapkures Village in Molo District within Nakuru County he murdered Edwin Kipkemoi Tuwei.
2. On 8<sup>th</sup> August 2018, he pleaded not guilty to the charge.
3. On 22<sup>nd</sup> February, 2022, the Prosecution and the Defence appeared before court with a Plea Agreement pursuant to **Section 137 A of the Criminal Procedure Code** where they negotiated the lesser charge of **Manslaughter contrary to section 202 as read with section 205 of the Penal Code** .
4. The court satisfied itself that the Plea Agreement was entered into knowingly and voluntarily. The accused pleaded guilty to the charge and facts. The facts as stated in the Plea Agreement were as follows:-

*“Kevin Kipng’eno Tuwei, the accused, is a younger brother to Edwin Kipkemoi Tuwei, now deceased. They were the sons to Joseph Kiprono and lived with their parents in Kipkures Village, Mau Summit. On 19<sup>th</sup> July, 2018, Edwin returned home at about 1.00 am in the morning. He was drunk and very violent. He violently confronted his siblings including Mercy Cheptoo, Dennis Kipchirchir and the accused. Dennis alerted their father who was sleeping in his house nearby and he went to son’s house to find out what the problem was. On reaching his son’s house, Edwin immediately confronted him and threatened to kill him. Mercy persuaded their father to go back to his house to avoid a fight. Meanwhile, Edwin broke a nearby fencing pole intending to use it to assault their father. Edwin then attacked the accused with the pole after which he picked a machete from Edwin and cut him several times on the forehead. Their father heard the commotion and came out of his house only to find his two sons lying on the ground with injuries. He mobilized neighbors who assisted him take the two to Molo Sub County Hospital for treatment. Kevin was treated and discharged but Edwin died while undergoing treatment.*

*Their father then reported the incident at Masaiden Police Post. Police Officers visited the scene and recovered the machete used in committing the crime. They also arrested Kevin.*

*On 23<sup>rd</sup> July 2018, Dr. Ngarama performed Postmortem examination on Edwin’s body at the end of which he formed the opinion the cause of his death was Hypolemic Shock, intracerebral hemorrhage causing severe head injury due to deep cut on the frontal part of the right side of the head.”*

5. The accused was convicted on upon his plea. The state submitted that the accused person is a first time offender and recommended ten (10) years custodial sentence.
6. In Mitigation, Mr. Oira holding brief for Mr. Nyagaka counsel for the accused, submitted that the accused is a first time offender and had no intention of killing the deceased but was protecting his family who were in danger of attacks from the deceased. He stated that considering the accused person’s age, future prospects, the facts that he is taking care of his old father coupled with the fact that he is remorseful about the incident and had stayed in custody for two (2) months prior to his release on bond, the most appropriate sentence is a non-custodial one for two (2) years.
7. The pre-sentence report was duly filed on 18<sup>th</sup> February, 2022.

8. Having carefully considered the circumstances surrounding this case and the pre-bail report, in my view the following are mitigating factors; The accused person is a first time offender; The circumstances of the incident show that it was the Deceased who was the aggressor. On the fateful day he came home drunk and violently confronted the accused together with his two siblings. He also threatened to kill his father prompting the accused person to intervene and consequently an attack ensued leading to the offence herein; The accused has admitted his mistake, pleaded guilty to the offence of Manslaughter, demonstrated remorse; the accused person is a young man aged twenty five (25) years, he is obedient, hardworking and his parents are looking up to him; The accused person has reconciled with his family and his family urged the Court to commit the accused person on a non-custodial sentence. Similarly, the local administration representing the accused person's community has no objection to the accused person be granted a non-custodial sentence; The accused person prior to his release on bond was in custody for two months and it was his father who is also the father of the deceased stood surety for him.

9. The aggravating circumstances of the accused attacking his brother are outweighed by the fact that it was in defence of members of his family and himself.

10. The accused person has been living in the community since his release on bond. There have been no issues. The recommendation for a non-custodial sentence is acceptable in the circumstances of the case.

11. The accused be and is hereby placed on **Probation Supervision for three years under Probation and Aftercare Office, Nakuru County** who have committed to empower him in inter personal skills and decision making among others

12. The surety is discharged.

13. Orders accordingly

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31ST MARCH 2022.**

**MUMBUA T MATHEKA**

**JUDGE**

**IN THE PRESENCE OF;**

**CA EDNA**

**MR. KIHARA FOR STATE**

**N/A FOR MR. NYAGAKA FOR ACCUSED**

**ACCUSED PRESENT**