



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Boke (Criminal Case E021 of 2021)
[2022] KEHC 10398 (KLR) (Crim) (26 April 2022) (Ruling)**

Neutral citation: [2022] KEHC 10398 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE E021 OF 2021**

LN MUTENDE, J

APRIL 26, 2022

BETWEEN

REPUBLIC PROSECUTION

AND

THOMAS MWITA BOKE ACCUSED

RULING

1. Thomas Mwita Boke, the Accused, was incipiently charged with the offence of murder contrary to section 203 as read with Section 204 of the *Penal Code*, but, opted to enter into a plea-bargaining arrangement with the prosecution as per the plea bargain agreement subsequently signed on 30th September, 2021 that was adopted as an order of this court pursuant to Section 137H of the *Criminal Procedure Code*. Consequently, he was convicted of a lesser charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*.
2. Facts of the case are that on the 10th March 2021 at 19:00Hours at Mukuru Kwa Rueben Railway Zone B Offices, James Mogendi, Joshua Mfupe Gori, and 3 others were drinking soup at a kiosk when they saw Evans Okeri Momanyi, (deceased) a motorcycle rider. James Mogendi called the deceased and requested to be taken to his place of work along Mombasa road. The deceased agreed to his request at a cost of Ksh. 100/- As the deceased waited for the customer he saw Richard Mokua a few metres away therefore moved to have a chat with him. Allover a sudden the accused appeared and touched the deceased's motor cycle with the left hand, an act that irked the deceased who insulted him by calling him a dog.
3. A commotion ensued and the two fought. The accused removed a knife, stabbed the deceased and fled. James Mogendi on being alerted by an individual who was selling soup, moved to the scene and found a member of public in an attempt to block the brother of the accused who tried to hit the deceased with a



display board. Having rescued the deceased, he lifted him up and realized that he was bleeding at the chest area. The deceased mentioned the accused as his assailant. He pursued and arrested him then caused him to be locked up in their office to deter irate people from lynching him. Subsequently the police re-arrested him and took possession of the knife that had been recovered.

4. The deceased was rushed to Kenyatta National Hospital where he succumbed to injuries sustained on the 16th day of March, 2021. A postmortem was done and it was ascertained that the cause of death was pulmonary and penetrating chest injury due to the stab wound.
5. In an endeavor to reach an appropriate sentence this court called for a pre-sentence report. The report was dated 8th March, 2022. The views of the victims were obtained from the deceased's parents and siblings. They were devastated and traumatized by his sudden demise.
6. The accused was not well known to members of the community at Mukuru Kwa Njenga therefore no views were obtained from them.
7. The prosecution asked the court to treat the accused as a first offender as it did not have previous records in that regard.
8. In mitigation, it was urged that the accused was remorseful having not been involved in any other criminal matter. That while in custody he has done Bible based studies and acquired certificates. Being a 28 years old young adult with a family to take care of he seeks an opportunity to provide for his wife and three children. That he admitted the offence and saved court's time. He prayed for a non-custodial sentence.
9. The provisions of Section 205 of the penal code enact that:
Any person who commits the felony of manslaughter is liable to life imprisonment.
10. I have been called upon to consider sentencing the accused to serve a non-custodial sentence. Whether or not to consider a custodial or non-custodial sentence depends on circumstances of the case. The court must consider existence of aggravating circumstances if any, and the mitigating factors. (Also see Judiciary Sentencing Policy Guidelines)
11. Though the accused has expressed remorse, is a young adult, and first offender, it is apparent that he used a knife to injure the deceased. Although the prosecution did not address this court on aggravating circumstances, it would be erroneous to conclude that the factors working against the accused do not exist in this case. The facts are clear and have also been highlighted in the presentencing report. The events that occurred led to loss of an innocent life.
12. Section 333(2) of the CPC provides thus:

Subject to the provisions of section 38 of the *Penal Code* (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.
13. In the case of *Bukenya v Uganda* (Criminal Appeal No. 17 of 2010) [2012] UGSC 3 (29 January 2013) the court stated that;

“Taking the remand period into account is clearly a mandatory requirement. As observed above, this Court has on many occasions construed this clause to mean in effect that the



period which an accused person spends in lawful custody before completion of the trial, should be taken into account specifically along with other relevant factors before the court pronounces the term to be served. The three decisions which we have just cited are among many similar decisions of this Court in which we have emphasized the need to apply Clause (8). It does not mean that taking the remand period into account should be done mathematically such as subtracting that period from the sentence the Court would give. But it must be considered and that consideration must be noted in the judgement.”

14. The accused has spent one year in custody and has urged that he has rehabilitated, but, there is no evidence to support the allegations.
15. From the facts presented, it is apparent that the accused was provoked by the insult and he acted at the spur of the moment. In the case of *Omuse vs. R* (2009) KLR 214, the court held that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and the proper exercise of discretion in sentencing requires the Court to consider that fact and circumstances of the case in their entirety before settling for any given sentence.
16. A comparison with other sentences meted out show that courts have meted out sentences outside the maximum sentence of life imprisonment for manslaughter. In the case of *Stephen Mwai Ndeti & Another* (2018) eKLR the accused killed their son and pleaded guilty to the offence of manslaughter, Odunga J. sentenced them to six (6) months’ probation and also noted that there was reconciliation.
17. In the case of *R-VS- Juliana Wanza Mulei* (2020) eKLR Kemei J. sentenced the accused to 10 years imprisonment and discounted 1/3rd of the period, the accused was to serve two (2) years. In that case, the accused and the deceased were lovebirds and had engaged in frequent fights. She was acting in self defence the accused had 4 children and was 35 years old. The court further set off the 2-year period she had already spent in remand and set her free.
18. In the case of *R-Vs- Jared Onyoni Maina* (2021) eKLR, Ougo J. sentenced the accused to ten(10) years imprisonment. In that case the accused pleaded guilty to manslaughter, he stated during mitigation that he was drunk and that he would stop taking alcohol. He was 39 years old and had 4 children.
19. In this case, the probation officer who carried out the social inquiry gave scanty information about the family of the victim, hence there is no evidence of any reconciliation having taken place and there would be nothing wrong with the accused being rehabilitated under the custody of the correctional facilities. That would be the best place to meet all applicable objectives of sentencing which include deterrence, retribution and reformation. It would also ensure justice for the victim is served.
20. For reasons given, I sentence the accused to ten (10) years imprisonment, having taken into account time spent in custody.
21. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF APRIL, 2022.

L. N. MUTENDE

JUDGE

IN THE PRESENCE OF:

Ms. Odour holding brief for Parklea for the State

Mr. Gichuki for Accused



Accused present

Court Assistant – Mutai

