



**Republic v Maiyo (Criminal Case 59 of 2020)
[2022] KEHC 11624 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 11624 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE 59 OF 2020**

**EKO OGOLA, J
MAY 26, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

DAVID KIMELI MAIYO ACCUSED

JUDGMENT

1. The accused David Kimeli Maiyo was charged with offence of murder contrary to section 203 as read together with section 204 of the [Penal Code](#).
2. However, pursuant to a plea bargain agreement entered into between the prosecution and the accused on 12/5/2021, the accused was charged with manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#).
3. The accused was charged that on the 4th day of October, 2020, at Budalangi village, Soy Sub-County within Uasin Gishu County without intention caused the death of Abraham Kibet.
4. On 9/12/2021 the accused pleaded guilty to the charge.
5. The prosecution then read the facts of the charge to the accused as follows:

On October 3, 2020 the accused called his three brothers, among them the deceased Abraham Kibet maiyo to his homestead to discuss on how they were going to build a house for their ageing father. The accused, the deceased and another brother by the name Stanley Murgor were all drunk and at around 10.00 p.m. an argument ensued among the brothers and they started quarreling each other in the presence of their ageing father. The accused started assaulting one of his brothers by the name Kipchumba Maiyo and that's when the deceased intervened and tried to stop the accused from assaulting their brother Kipchumba Maiyo. The accused then went into the house, took a kitchen knife from



the cupboard and rungu and went outside. He proceeded to where his brothers were and headed straight to Kipchumba Maiyo. He wanted to stab the said Kipchumba maiyo but he ended up stabbing the deceased on the chest as he was trying to protect their brother Kipchumba. The deceased started walking toward the road as he sought for help to go to the hospital. The deceased met with one Julius Rono, a village elder and he told him what had happened. He was in extreme pain and fell down by the roadside. The village elder called the police and informed them about the incident. The police arrived at the scene and were led to the accused's home. The officers managed to recover a blood stained kitchen knife that was used to stab the deceased. The police arrested the accused and took him to Soy Police station pending further investigations. They took the deceased to Soy B Health Centre where he died while undergoing treatment. The deceased's body was later taken to Moi Teaching and Referral Hospital awaiting a post-mortem. The same was conducted on October 9, 2020. The doctor opined that the cause of death was severe chest injury due to stab wound. The post mortem form is produced as prosecution exhibit 1. The blood stained kitchen knife and a sample of the deceased's blood was subject to analysis by the government chemist analyst who confirmed that the blood stains on the kitchen knife matched the DNA profile of the deceased. The government analyst report dated March 10, 2021 is produced as Prosecution Exhibit 2 (a) and the exhibit memo that was used to forwarding the exhibits to the government analyst dated October 23, 2020 is produced as prosecution exhibit 2 (b). the kitchen knife is produced as prosecution exhibit 3.

On October 23, 2020 the accused was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* which the State now reduces to manslaughter contrary to section 202 as read with section 205 of the *Penal Code*.

6. The accused confirmed that the facts were correct.
7. M/s Okok for the State submitted that the accused was first offender. The deceased was his brother. The family had forgiven the accused and are willing to receive him into the family fold. The community members also have no problem with the accused and would be happy to have him rejoin the community. M/s Okok submitted that a sentence of five (5) years would be adequate punishment for the crime in the circumstances.
8. Mr. Mengich, learned counsel for the accused submitted that the accused is a first offender, married with young children. That he is remorseful for what he did and that he was intoxicated at the time of the incident. Counsel submitted that a jail term for two (2) years would be sufficient punishment for the crime.

Determination:

9. I have carefully considered the evidence and submissions in this matter. This was a very unfortunate incident. It started well, at night, brothers coming together to discuss how to build a house to their aging father. A very noble discussion. However, it appears all of them were at the same time taking alcohol. Well past 10.00 p.m. The alcohol had taken toll of the brothers who started quarrelling, leading to the accused going into his house and taking a kitchen knife and stabbing one of his brothers. This death, clearly, was not premeditated, although it was very unfortunate. The father of the accused, who also lost a son, was in this court and stated that they need a family closure, that he has already lost one son, and that the accused has family responsibilities and should be treated with leniency.
10. On the issue of conviction, the accused pleaded guilty to the charge and was accordingly convicted on his own plea of guilty. On the sentence, it is to be noted that a guilty plea under manslaughter attracts



a maximum of a life sentence under section 205 of the *Penal Code*. Be that as it may, this court has considered the content of the plea bargain agreement, the submissions of the parties, and the plea of the victim who is the father to the deceased and the accused. In my opinion of the court, however, a life was lost. That life needed not to been lost. Somebody must carry responsibility for that loss. This court must send out a clear message to would be offenders that every offence shall be properly punished when proved.

11. Although under the law the accused can be jailed to a maximum of life in prison, I have considered the plea of the accused's father, who is also the victim, and the fact that he has also lost a son. In those premises, I am satisfied that a custodial sentence of four (4) years would be adequate punishment.
12. I therefore sentence the accused to serve a jail term of four (4) years from the date of arrest.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 26TH OF MAY 2022.

E. K. OGOLA

JUDGE

