



**Republic v Wanyonyi (Criminal Case E006 of 2021)  
[2022] KEHC 13303 (KLR) (28 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13303 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CRIMINAL CASE E006 OF 2021  
RL KORIR, J  
SEPTEMBER 28, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**KELVINE NASIAHO WANYONYI ..... ACCUSED**

**JUDGMENT**

1. Kelvin Nasiaho (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 are that on the April 24, 2021 at Kaprotet estate of James Finlay Tea Estate Saosa Sub location in Konoin Sub County within Bomet County jointly with another before court murdered Mukachelelwa Mtenyo.
2. The accused took plea and denied the charge. The trial commenced on November 23, 2021 when the court heard 2 witnesses. When the matter came up for further hearing on March 22, 2022 the defence counsel told the court that the accused wished to pursue plea negotiation with the prosecution. Subsequently the parties filed a plea agreement dated June 21, 2022 which the court accepted after examining the accused to ascertain that he voluntarily executed the agreement.
3. The accused pleaded guilty to the lesser charge manslaughter contrary to section 202 as read with section 205.
4. The facts were read by the prosecution as follows:

“The brief facts of the case are that on the April 24, 2021 at around 1300 hrs it was reported by the security manager James Finlay tea estate that they had sighted a suspected human body buried inside the tea bushes at Kaprotet Estate Field No 29. Police officers from Konoin Sub County rushed to the scene where the body of a male African adult about 25 years of age with injuries on the face and suspected stab wound on the chest was retrieved. The body looked freshly buried and about 20 metres from the body, a black stone with bloodstains



suspected to be the murder weapon was found, about 200 meters in a pit latrine a white and black bloodstained jacket was retrieved and next to it a hoe with wooden handle was found; on top of the tea and black blood stained jacket identified as that of Noah Mtenyo. The police set to the house where the deceased stayed at the house one Kelvin Nasiaho. Kelvin Nasiaho admitted that he lived with the deceased and he also identified the body as that of Noah Mtenyo. After searching the house the following items were recovered: a bloodstained black jacket, a bloodstained pair of black gum boots and a white jumper with blood stains. Two mobile phones recovered from the said Kelvin and a second suspect Lameck Okitwi was arrested.

After investigations it was established, the deceased was murdered by the said Kelvin Nasiaho. All items recovered from the scene have been forwarded to government chemist for DNA comparison with blood samples from both deceased and suspects and the mobile phone details to Safaricom to ascertain the ownership.

One suspect Kelvine Nasiaho was later charged before court for the offence of murder contrary to section 203 as read with 204 of the *Penal Code*”.

5. The accused accepted the facts as true and was duly convicted on his own guilty plea of the offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*.
6. The court called for a pre-sentence probation officer's report and victim impact statement and scheduled a sentence hearing.
7. Learned Counsel Ms Chepkemai filed written mitigation on July 29, 2022 on behalf of the defence. They submitted that the accused had saved precious judicial time and saved witnesses from trauma associated with testimony. They further submitted that the accused regretted having caused the death of his childhood friend and that the death had continually haunted him. They further stated that the accused's family had sought out the deceased's family to initiate reconciliation and that his (accused's) family was willing to welcome him home. In conclusion they submitted that the accused was remorseful and prayed for a lenient sentence and in particular a probationary sentence.
8. The state through prosecution counsel submitted that they had no previous criminal records and that the accused was a first offender.
9. Sentencing serves various purposes as set out at page 15 in para 4.1 of the Judiciary *Sentencing Guidelines* (2016). These are:-
  1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
  2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
  3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
  4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
  5. Community protection: To protect the community by incapacitating the offender.
  6. Denunciation: To communicate the community's condemnation of the criminal conduct.”



10. In *R v Scott* [2005] NSWCCA 152 Howie, J Grove and Barr, JJ stated:-

“There is a fundamental and immutable principle of sentencing that this sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed in the circumstances of the crime committed...One of the purposes of punishment is to ensure that an offender is adequately punished...a further purpose of punishment is to denounce the conduct of the offender.”

Similarly, the objectives of sentencing were reiterated in the High Court at Kwa Zulu Natal, *S v Mchunu and another* (AR24/11) [2012] ZAKZPHC 6, where, making reference to the *Scott* case (*supra*), it held thus: -

“It is trite law that the issue of sentencing is one which vests a discretion in the trial court. The trial court considers what a fair and appropriate sentence should be. The purpose behind a sentence was set out in *S v Scott-Crossley* 2008 (1) SACR 223 (SCA) at para 35:

“Plainly any sentence imposed must have deterrent and retributive force. But of course one must not sacrifice an accused person on the altar of deterrence. Whilst deterrence and retribution are legitimate elements of punishments, they are not the only ones, or for that matter, even the over-riding ones.”

11. In crafting the appropriate sentence in this case, I have borne in mind the facts and circumstances of the case and the circumstances of the accused as borne in the probation officer’s report dated July 19, 2022. The probation officer stated that the deceased and the accused were raised together in the accused’s home as the former was an orphan. That the incident which occurred at the James Finlay Tea Estate in Konoin Sub-County in Bomet shocked their community back home in Matisi Sub-location in Likuyani, Kakamega County as the two were known to be childhood friends. That the family of the accused had tried reaching out to the extended family of the deceased but their efforts collapsed due to the greed displayed by the later who demanded Kshs 250,000/= contrary to their cultural traditions. The report concluded that the home environment was conducive for the accused to be placed on a non-custodial sentence.
12. I have considered the mitigation offered by the accused. He stated that he was remorseful. I have also considered that he caused the death of the deceased merely on account of a debt of Kshs 2,000/= which the deceased was demanding from him. That at the time of the incident both the accused and the deceased were drunk.
13. It is my conclusion having taken all factors into consideration that the accused will benefit from rehabilitation from alcohol abuse and anger management. It is my considered view also that human life must count and any reckless violation of the right to life ought to be punished. I have however considered that the accused saved judicial time by pleading guilty
14. I sentence the accused to serve ten (10) years’ imprisonment. The sentence shall run from the date of incarceration being May 5, 2021.

Orders accordingly.

**JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2022.**

.....

**R LAGAT-KORIR**



## **JUDGE**

Judgement delivered in the presence of Mr Njeru for the State, Ms Chepkemoi for the accused and Kiprotich (Court Assistant)

