



**Republic v Kipchirchir (Criminal Case E010 of 2021)
[2022] KEHC 12983 (KLR) (21 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 12983 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E010 OF 2021
EKO OGOLA, J
SEPTEMBER 21, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

VINCENT KIPCHIRCHIR ACCUSED

JUDGMENT

1. The accused Vincent Kipchirchir was charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars of the charge were that

“On the 1st day of February 2021 at Kapkonga village, Kipsaos sub-location in Elgeyo Marakwet county, he murdered, Allan Kipchirchir Kiplagat”
2. When the accused was arraigned for plea taking on 25/2/2021 before hon lady justice Olga Sewe, he pleaded not guilty to the offence. The court then entered a plea of not guilty.
3. On 22/9/2021, when the matter came up for hearing, Mr Mugun prosecution counsel informed court that parties had successfully concluded the plea agreement along with an amended information. Counsel prayed that the plea agreement be adopted by court. When the accused person was asked by court if he had entered into the said plea agreement, the accused person confirmed that he had entered into the said plea agreement on his own free will and that he understood the terms of the plea agreement.
4. The plea agreement dated 6/9/2021 was then adopted by court and the prosecution reduced the charge from murder to the lesser offence of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#).
5. The above charge of manslaughter was read over to the accused person in the Kiswahili language and he admitted the charge of manslaughter by unlawful killing of the deceased subject of the plea-bargained



charge of manslaughter. Facts of the case were also read out and recorded by the court and interpreted to the accused in Kiswahili language and he admitted the facts to be correct. The court then entered an unequivocal plea of guilty to the charge of manslaughter and convicted him accordingly.

6. The facts as admitted by the accused person are that on the night of 1/2/2021, at about 8:30pm the accused went to the hotel of Vincent Kipruto to buy mandazi. From there the accused then proceeded to a bar known as Greenland but was told that the bar had been closed. He left the bar and headed for home. On his way home the accused met the deceased Allan Kipchirchir Kiplagat, who was with a friend known as Henry Kiprotich. The said Henry greeted the accused and called him “ngetai” which means the uncircumcised one. The accused felt offended and picked a quarrel with Henry. The quarrel degenerated into a fight. The deceased intervened so as to separate the two. The accused then turned against the deceased and stabbed him with a knife on the left side of the stomach and he then ran away from the scene.
7. The deceased was then taken to Kamwosor hospital where he was pronounced dead on arrival. On 8/2/2021 a post-mortem was conducted and the doctor formed the opinion that the cause of death was excessive bleeding. The said report was produced in court as an exhibit marked as PExh1.
8. On the same night of 1/2/2021 the accused surrendered at Kambi ya Moto police station, where he was placed in custody and was thereafter charged with murder which has now been reduced to manslaughter.
9. In mitigation, Ms Bor counsel for the accused submitted that the accused is a first offender and that he had surrendered himself to the police which shows that he regretted his action. Counsel further submitted that the accused had no intention to kill the deceased as this was a single stab wound. Counsel pleaded that the accused be imprisoned for a term of not more than (5) years.

Determination

10. I have considered the facts of the case as presented by the prosecution counsel Mr Mugun, and the exhibit produced, the fact that the accused person has pleaded guilty unequivocally to those facts which disclose an offence. I have also taken into account the fact that the accused is a first offender and the mitigation presented by his Counsel Ms Bor. The accused picked a quarrel with the deceased’s friend Henry after he termed his as uncircumcised. It was unfortunate that the said quarrel then escalated into a fight that lead to the untimely demise of the deceased. The deceased died due to a stab wound to his stomach that caused excessive bleeding as per the post-mortem report.
11. It is clear from the foregoing that the deceased died as a result of a fight which he had only joined to try and separate the scuffle between the accused with Henry when the accused stabbed him. The accused did not have a premeditated intention of killing the deceased, albeit the act of killing the deceased was unlawful and wrongful.
12. It is worth noting that the court on several occasions requested for a pre-sentence report in this matter, however the probation department failed to avail one in time. A pre-sentence report is a product of a social inquiry or investigation ‘is a process of generating data and information on a specific subject matter or an offender for the purpose of documenting and understanding the attendant causes of behaviour and events. Pre-sentence reports provide advisory information to the courts with a view to the court making sentencing verdicts, including decisions on alternative measures to imprisonment.
13. Be that as it may, punishment for manslaughter under section 205 of the *Penal Code* is up to life imprisonment. I have considered the fact that the accused has pleaded guilty to the lesser charge of



manslaughter, the circumstances under which this offence was committed, the age of the accused, mitigation and taking into account the objects and guidelines on sentencing:

14. I hereby exercise discretion and sentence the accused person Vincent Kipchirchir to serve six (6) years imprisonment calculated from the date of arrest being 1/2/2021.

15. Orders accordingly.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 21ST OF SEPTEMBER 2022.

E. K. OGOLA

JUDGE

