



**Republic v Koim (Criminal Case 17 of 2017)
[2022] KEHC 14619 (KLR) (28 October 2022) (Sentence)**

Neutral citation: [2022] KEHC 14619 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 17 OF 2017
PJO OTIENO, J
OCTOBER 28, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSHUA KOIM ACCUSED

SENTENCE

1. A plea agreement dated 17/6/2022 and filed in court on the same day, came before court for adoption, was adopted, a plea of guilty was entered against the accused for the offence of manslaughter and a conviction in that regard made.
2. Pursuant to that plea of guilty and conviction having been entered, the court directed that a pre-sentencing and/or a victim impact statement report be filed by the probation officer prior to mitigation and sentencing.
3. The pre-sentence and victim impact statement report was filed on 21/9/2021 and reveals that the accused family as well as the community are open to having him back at home on a non-custodial sentence for purposes of being assisted to reintegrate into society and becoming a responsible and productive citizen. The victim's family, the local administration and the family of the accused see no threat to them and the peace of the community at large, if the accused is granted a non-custodial sentence, as the report says the two families have resolved to amicably restore relations by application of the maasai customs.
4. I have taken into account the recommendations made in that report and the mitigation offered by Ms Wilunda, advocate, on behalf of the accused who urged the court to exercise leniency on the accused and to consider that he has saved judicial time by entering a plea agreement. Counsel added that the accused was a nephew to the deceased and the fact that the two families desire to have a community based reconciliation. She pointed to court that the accused is married with two young daughters who



needs his presence as a father and that only a non-custodial sentence will benefit the accused and the family. That the accused has during incarceration has undergone rehabilitation, trained in theology and ow a pastor of the SDA church in prison was underscored it being urged that he be set at liberty to enable continue to evangelise.

5. I have equally taken into consideration the sentiments expressed by Ms Chala, the prosecuting counsel that the offense for which the accused has been convicted is a serious one and that only a custodial sentence will help him reform. The counsel urges that the accused deserves no leniency by way of a non-custodial sentence.
6. Drawing guidance from the objectives of sentencing in criminal justice system, and being cognizant of the gravity of the offence for which the accused has been convicted, the age of the accused, that of the deceased and the fact that both were colleagues and relatives who had lived in the same compound, agreed on work schedules and that one would hold fort and earn the salary of the other while that other has gone off duty to visit family, for a long time, and that he has no past criminal record, I find that the circumstances of the case and views of the community favours the imposition of a lenient sentence.
7. Having given regard to the above factors and considerations, I determine that the case presents a suitable scenario for the application of section 33 of the *Penal Code*. I determine that the accused be sentenced to serve an imprisonment term of seven years, computed from the date he was arraigned in court being the May 9, 2017, and thereafter enter into a cognisance in the sum of Kshs 100,000, with one surety in the like sum, and bind himself to keep the peace and be of good conduct for a period of one year, computed from the date the imprisonment term hereby imposed terminates. It is further ordered that the accused shall not be released from prison before he executes the cognisance.
8. The order to keep the peace and be of good conduct shall be supervised by the area Chief, Oletepesi Location, Mr Ole Morosi or the person who shall succeed him in that office.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT THIS 28TH DAY OF OCTOBER, 2022.

PATRICK J.O OTIENO

JUDGE

In presence of

Court Assistant: Polycap Mukabwa

Ms Chala for the Prosecution

Ms Wilunda for the Accused

Accused – present

