



REPUBLIC OF KENYA



KENYA LAW
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**ODPP v JKY (Criminal Case 2 of 2019)
[2022] KEHC 17154 (KLR) (28 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 17154 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 2 OF 2019
TM MATHEKA, J
DECEMBER 28, 2022**

BETWEEN

ODPP REPUBLIC

AND

JEFFERSON KIPKOECH YEGON ACCUSED

JUDGMENT

1. Jefferson Kipkoech alias Mike Yator was charged with murder contrary to Section 203 as read with 204 of the *Penal Code*.
2. It was alleged that on January 2, 2019 at Kapkelelwa village, Sacho Soi Location, Baringo Central Sub-County within Baringo County, he murdered Kipkew Masangai aged 75 years old.
3. Plea was taken on February 20, 2019. The accused pleaded not guilty. At that time, he told the Court he was 17 years old and in form 2. He was granted bond, and was released on March 13, 2019. However, he absconded and the bond was subsequently cancelled on January 16, 2020 when he was placed in remand custody at Eldoret G K Prison.
4. On May 19, 2022, his advocate Mr Chepkilot told the court that the accused wanted to enter into a plea agreement. On November 21, 2022 the Court was told that the prosecution and the defence had already agreed on the plea agreement.
5. Upon satisfying myself that the accused person understood the nature of the plea agreement and was competent to take the plea agreement, I proceeded to record the same in line which Sections 137A to I and L of the *Criminal Procedure Code*.
6. The accused pleaded guilty to the negotiated charge of manslaughter contrary to Section 202 as read with 205 of the *Penal Code*. Thereafter the prosecution placed the facts before the court.



7. That on the material day about 8.00p.m. the accused was in his father's homestead at a place called Kaptiony village. He noticed that there was someone in their cattle boma. He went there to check and found one Masengani a neighbor aged 70 years old. He began to interrogate him as to what he was doing inside there. He then sent his younger brother to fetch their father to come and deal with the issue. It took a while for the father to come. One brother to accused, some other 2 persons who heard about the incident went to the scene, the accused began to interrogate the deceased. The other person cautioned the accused and this other neighbor to handle the old man with care as they waited for the father of the accused.
8. The accused for some reason got agitated and without reasonable cause picked a stone and hit the deceased on the head inflicting a deep cut. The old man fell down bleeding profusely and died days after that. The father of the accused and the little brother that had sent to call him arrived to find the old man dead. The accused took them to where the body was and took responsibility for the death. The matter was referred to the local administration, the police were called to the scene. The murder weapon was recovered. The accused was arrested and escorted to Kabarnet Police Station.
9. The postmortem was conducted on January 10, 2019. The pathologist found the body of a 75 years old man. He had a large left temporal parietal laceration with a comminuted skull fracture, brain evisceration, bruises on the scalp, and the forehead, multiple bruises left leg, bilateral conjunctival hemorrhage. Intra-muscular hemorrhage on the dorsum of the left hand and posterior left forearm (defence wound).
10. Cause of death: Acute head injury due to blunt force trauma following assault. A DNA test also revealed that the blood stained on the stone matched the blood of the deceased.
11. The accused person pleaded guilty to the facts. He was convicted on his own plea of guilt.
12. The prosecution submitted that the accused was not a first offender as he had been charged with Burglary contrary to section 304 (2) of the *Penal Code* i2-yearnet PMCRC 1/2020 and was serving a 2-years imprisonment term. The prosecution produced the committal warrant. Prosecution proposed 20 years' imprisonment.
13. In mitigation counsel for the accused submitted that the accused was 19 years old at the time of the offence. That he had dropped out of school at form 2. That he had disturbed past, due to poverty; that he had sufficient time to consider what he had done. He sought a lenient sentence, so that he would undergo counselling, pursue his education, and later raise a family; that his family and that of the deceased had recovered.
14. Consequently, I sought a pre-sentence report. It was filed on December 5, 2022 but did not have the victim impact assessment report because the PAC's officer could not trace the family of the victim. I insisted they were efforts needed to be made to trace them because their views were important with respect to the disposal of the matter.
15. In any event from the fact of the case the deceased was said to be not only a neighbor but also a relative.
16. The report was later filed, and it indicated that the deceased's widow was aged about 70 years, one son had collapsed when the body of the deceased was being removed from the mortuary. He had hit a son with his head, and unfortunately died from the injury.
17. The report revealed further that the family of the accused appeared to be dysfunctional and no one was really concerned with what had happened. The previous report had indicated that the community and the local administration were opposed to a non-custodial sentence. The family of the victim sought a for non-custodial sentence.



18. The only issue for determination is: -

What is the Suitable Sentence in the Circumstances?

19. The accused person was 19 years old at the time he committed the offence. There appears to have been no reason for his attack on the deceased. The Probation Officers Report indicates that the accused had been taking illicit brew that afternoon. The accused took responsibility for the offence, and admitted the same on plea agreement.
20. He is a youthful offender. He has spent time in custody, and in prison for the other offence he already committed. He may need opportunity to change his ways and serve society, if well rehabilitated.
21. Hence, though he is young, a non-custodial sentence is not available to him due to the circumstances of the offence, and his own circumstances. He needs to be in prison custody so that he can get the help he needs, going by the prison motto, “*Kurekebisba na Haki*” he ought to leave a better person than he went in.
22. I find therefore that a sentence of 7 years with effect from the date of his arrest after he absconded that is January 16, 2020.
23. Hence the accused is sentenced to serve 7 years’ imprisonment with effect from January 16, 2020.
24. Orders accordingly.

Dated, signed and delivered virtually this 28th day of December, 2022.

Mumbua T. Matheka,

Judge.

In the presence of:

C.A Kemboi

Ms. Ratemo for State

Mr. Chepkilot for accused

Accused present virtually from Eldoret G. K. Prison.

