



**ODPP v Kipsang (Criminal Case 07 of 2020)  
[2022] KEHC 17124 (KLR) (28 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 17124 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE 07 OF 2020  
TM MATHEKA, J  
DECEMBER 28, 2022**

**BETWEEN**

**ODPP ..... REPUBLIC**

**AND**

**GODWIN KIBIWOTT KIPSANG ..... ACCUSED**

**JUDGMENT**

1. Godwin Kibiwot Kipsang was charged with Murder Contrary to section 203 as read with 204 of the [Penal Code](#). It was alleged that on the April 25, 2020 at 1330 hours at Kameron Village Chepkero Location, Baringo Central Sub County within Bongo County he murdered Isaac Kipsang Kangogo.
2. Accused took plea on May 26, 2020. He pleaded not guilty.
3. A plea agreement was entered between him and the DPP on the November 22, 2022 where he pleaded guilty to the lesser charge of Manslaughter Contrary to section 202 as read with 205 of the [Penal Code](#).
4. Upon satisfying myself that he was competent to take the plea agreement, the prosecution gave the factual background that the accused and deceased were brothers.
5. The previous day the deceased had attacked their mother one Salima Jematai Kosgei with a hammer. She ran away from the home. On this April 25, 2020 the accused and deceased went to the river to bath. A fight broke out when the deceased began to accuse of wanting to steal his goats. Accused threw a stone at the deceased. It hit his head. He fell down.
6. According to their other brother, one Kipchumba, he heard the sounds of the fight and even the accused calling the brother now deceased pepo saying hii ni pepo ( this is bad spirit). He found the accused on top of the deceased with a stone in one hand. He separated them but the accused also attacked Kipchumba who ran away. He called for help. When people came the deceased was on the ground unable to get up and the accused had already escaped. He was bleeding from the head. The



- chief was called and he relayed the information to Kabarnet police station. Isaac Kibiwot Kipsang had died. The post mortem report showed the cause of death as internal hemorrhage at the lung and head. He had a fracture on the head, fracture of the 7<sup>th</sup> and 9<sup>th</sup> rib on the right side, fracture of left mandible and his teeth were outside. He had clots in the right lung, and clots in the temporal side of the head.
7. The Prosecution produced three stones found at the scene that were blood stained and the post mortem report.
  8. The Accused pleaded guilty to the facts of the case. He was convicted on his own plea of guilt.
  9. Ms Ratemo prosecution counsel submitted that the family was ready to take him back but a life was lost. The prosecution left the issue of sentence to the discretion of court.
  10. In mitigation, Mr. Kipkulei counsel for the accused submitted that the accused was the 5<sup>th</sup> born of the family and was remorseful. That the offence was committed out of rage and the accused had learnt to control his temper while in custody. On the ground that the accused was a first offender counsel sought a non custodial sentence.
  11. The Probation and Aftercare Services Report was filed on December 7, 2022. He was born in 1997 and was in form 3 at Solian Secondary School when he was arrested. The family of the offender and that of the victim are the same. The family says the deceased was a very violent man and had a previous conviction of killing his paternal grandmother. That the offender acted in self defence.
  12. That the entire family has forgiven him.
  13. The report proposes a non-custodial sentence of 2 years probation supervision to enable him to continue with his education.
  14. I have carefully considered the circumstances of the offence, the mitigation by the accused and the only issue is what would be the appropriate sentence.
  15. A sentence ought to not only address the offender's circumstances but those of the victim and the society at large; his rehabilitation and reformation and the wholesome restoration of the societal ties.
  16. Both the mitigating and aggravating circumstances are important and must be considered.
  17. The accused person is a first offender. However the manner in which he committed the offence was brutal. That kind of rage is a risk not only to himself but to others and must be given a name and dealt with. True a fight broke out but his reaction in the self defence was extreme and he used excessive force. There is no evidence that after he threw the stone that felled the deceased the deceased attacked him again to warrant the kind of stoning the accused gave him.
  18. Even though the family is said to be ready to receive him back, the accused clearly has a problem that needs fixing through rehabilitation as he gives the impression that he has no control over his rage.
  19. In the circumstances I am not persuaded that the accused is suitable for a non-custodial sentence.
  20. The accused is sentenced to 10 years imprisonment with effect from the date of his arrest.
  21. During his imprisonment the Prison authorities ensure that he gets the appropriate psycho social support, counseling and all.
  22. The last year of his sentence will be served on probation supervision.
  23. The Prison authorities ensure that they notify the Probation and After Care Services to enable reintegration.



24. Orders accordingly.

**DATED, SIGNED AND DELIVERED THIS 28<sup>TH</sup> DAY OF DECEMBER, 2022.**

**MUMBUA T. MATHEKA,**

**JUDGE.**

**C/A Kemboi**

**For state: Ms Ratemo**

**For Accused: Mr. Kipkulei**

**Accused**

