



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Lebene (Criminal Case E006 of 2021)
[2022] KEHC 17125 (KLR) (28 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 17125 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E006 OF 2021
TM MATHEKA, J
DECEMBER 28, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

EDWIN LEKUTA LEBENE ACCUSED

JUDGMENT

1. Edwin Lekuta Lebene was charged with murder contrary to section 203 as read with 204 of the [Penal Code](#). It was alleged that on January 27, 2021 at Nosukura Village Rogus Location Baringo South Sub County within Baringo County he murdered Evanson Lekichep Namaya.
2. The accused pleaded not guilty on February 10, 2021. His advocate is Mr Kipkulei.
3. On November 21, 2022 the court was told that the defence and prosecution had entered into a plea agreement. The same was recorded after the court satisfied itself that the accused was competent to enter into such an agreement, and the prosecution had complied with the statutory requirements. The accused person pleaded guilty to the lesser charge of manslaughter contrary to section 202 as read with 205 of the [Penal Code](#).
4. The facts as presented by the prosecution through Ms Ratemo were that the accused and the deceased began a quarrel when the deceased demanded to know from the accused why he was speaking to a certain woman by the name Gladys. The accused explained to him that he was borrowing a phone battery and then left with his friend one Lotising. He thought the matter was over.
5. However later that evening while the accused was in the home of one Miriam, the deceased came there and began to beat him with a walking stick. A fight broke out. They fought and the accused ran away and hid behind the house.



6. The deceased followed him. Lotising who was present also followed them. The deceased pulled out a knife and tried to stab the accused. Lotising grabbed the deceased from behind. In the process the accused person grabbed the knife from the deceased and in the struggle stabbed him on the right side of the chest once. The deceased fell down, and the accused then ran away with the knife. One Tegla who was present went and called Miriam. She found the deceased in a pool of blood. The matter was later reported to the police and the accused was arrested by his brother and the chief and taken to the police station. The knife was recovered.
7. The post mortem was conducted, and the cause of death was determined to be a penetrating chest injury due to sharp trauma. (transected aorta) following assault. The accused also sustained injuries to face, neck, and thumb, he had bite injuries caused by the deceased.
8. The accused person pleaded to the facts and was convicted on his own plea of guilt.
9. Prosecution produced the knife, the post mortem report, reports from government analyst and the exhibit memo.
10. In mitigation counsel for the accused told the court that the accused is 25 years old. that he completed form four in 2020 at Sekotei Secondary School where he secured a D-. He was already married with 2 children, aged 6, 2 and is a fisherman. He has old parents aged 89 (father) and 63 (mother) who depend on him.
11. Though he acted out of self defence he regretted the offence and was truly remorseful. He had already been in custody for 2 years. Upon all of the foregoing counsel sought non-custodial sentence, and cited [*Julia Wanza Mulei v Republic \[2020\] eKLR.*](#)
12. I asked for a pre-sentence report from Probation And After Care Services, and one was filed on December 6, 2020 by Probation and After Care Services officer Baringo County. The report confirms that the accused acted in self defence. It confirms that he is the last born in the family and he has a young family, that he has no previous criminal record.
13. The report however states that the community is not ready to receive him back and there are fears for his own safety, that should he be released now harm may come to him. Even his own family is reported to be fearful for his own safety.
14. On this ground alone, the Probation and After Care Services Officer finds him unsuitable for a non-custodial sentence, a position shared by the local administration.
15. The only issue for determination is what sentence.
16. A plea negotiation is a legal process allowed by law, section 137A of the [*Criminal Procedure Code*](#). In this case the accused person pursued the lesser charge *vide* section 137 A 1 (a). The same was recorded in accordance with sections 137 E, F, G, H and I.
17. A person convicted for manslaughter is liable for imprisonment for life as per section 205 of the [*Penal Code*](#) and the sentence will depend on various factors as per the [*Sentencing Policy Guidelines*](#).
18. The court is also required to weigh the mitigating and the aggravating circumstances. According to the PACs officer, the accused person is suitable for a non-custodial sentence except that the home environment is unsafe.
19. In my view this is not good for the rule of law: that a person will be attacked by another and due to the consequences of his action in self defence the same community where it happens becomes hostile to him and almost two years after the incident (the offence was committed on January 27, 2021)



20. Persuaded by the reasoning of Kemei J in Juliana Wanza Mulei I find that a sentence of 3 years imprisonment would suffice to run from the date the accused was arrested.
21. Orders accordingly.
22. I need to add this: It is noteworthy that the Probation and Aftercare Services Baringo County appears comfortable with the community attitude towards offenders where the community is against non custodial sentences. I would consider that to be a serious gap in the community's awareness of the benefits of non custodial offenders especially, 1st offenders. It is not ok for the Probation and After Care Services to be content that the community is averse to non custodial sentences, yet the Constitution at article 159 requires us to encourage reconciliation etc. Someone must show the community what reconciliation in the justice system is, and what benefits it brings to the community, and unless the Probation and After Care Services becomes pro-active then this community will be left behind.
23. Probation order is a lawful sentence to be served within the community to achieve certain goals. Unless the community is made aware of this, then the attitude will not change. That in a case where the aggressor is the one who died, the life of the offender remains at risk, yet it is in the public domain of that community that he was provoked and acted in self defence? This is not good for law and order because had he not been attacked by the deceased this would not have happened.
24. There is nothing in the report to show that the accused has fears for his life, nor did the probation officer consider another alternative, for instance Probation hostel pending preparation of the home environment followed by probation supervision.
25. The Criminal Justice System has been reformed by the Constitution of Kenya 2010. With the bill of rights, rights of an accused person, the rights of the victim of crime and efficiency and effectiveness expected out of statutory coordination of the National Council on the Administration of Justice, the workings of the court users committees, the people have a right to the right information and the agencies the obligation to demystify the system.
26. This is the vision of the Constitution of Kenya is that the community will play a role in the rehabilitation of the offenders. That in my view is the purport of article 159(2) (c) of the Constitution.

DATED, SIGNED AND DELIVERED THIS 28TH DAY OF DECEMBER, 2022.

MUMBUA T MATHEKA,

JUDGE.

C/A Kemboi

For state: Ms Ratemo

For Accused: Mr Kipkulei

Accused

