



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO.24 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

NICHOLAS KIPROTICH BOSUBEN.....ACCUSED

RULING ON SENTENCE

1. The Accused Person in this case, **NICHOLAS KIPROTICH BOSUBEN** was charged with Murder Contrary to Section 203 as read with Section 204 of the Penal Code which offence was reduced to Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code following a successful plea bargain agreement signed on 7/10/2020.
2. The particulars of the charge were that on 6/10/2018 at Kabianga University in Kabianga Location within Kericho County, the Accused Person unlawfully killed **DENIS MUKASA**.
3. The facts of the case were as given to the Prosecution were as follows:-

On the 5th day of October, 2018, at around 2100hrs, the deceased was in the company of his fellow students of Kabianga University taking alcohol and enjoying themselves at Meridian club which is located in Kabianga market.

At around 2200hrs, two of the students by the name Julius Kimanzi and his girlfriend Mary Atieno left to go and sleep since they were very drunk.

The deceased and his friend Martin Omwenga continued to enjoy themselves until around 0015 hrs when they decided to go and sleep. On reaching their residential place called Heros within Kabianga Market, they found the door of their house locked from inside. They tried knocking but their friends who had left them in the club earlier could not respond as they were fast a sleep. Efforts to bang the door hard also bore no fruits.

They decided to peep through the window and saw Julius Kimanzi and his girlfriend Mary Atieno in deep sleep.

The deceased knocked on the window and suddenly smashed the window using his bare hands breaking it into pieces.

The commotion attracted the Accused Person who was their neighbor. He came out of his house and went to where they were. He asked them what was happening but before they could respond, he started beating them with blows. The deceased and his friend Martin tried to fight back but were overpowered by the Accused Person.

The Accused Person hit Martin and he fell down then he went ahead to beat the deceased and when the deceased resisted trying to defend himself, the Accused Person drew a knife from his trouser and used it to stab the deceased on the right side of the neck.

The Accused then fled from the scene. The commotion caused Julius Kimanzi to open the door and helped deceased enter the house and sat on the bed. The deceased was bleeding profusely so they tried to administer first aid to stop the bleeding but they couldn't manage. They deceased to rush him to hospital using a Motorcycle (Boda boda).

The deceased was pronounced death on arrival at Kabianga Health Centre (dispensary).

The deceased's body was then transferred to Kericho County referral hospital mortuary where a postmortem was performed by Dr. W. Rotich who formed the opinion that the cause of death was massive blood loss and a sphyxia due to cut blood vessel on the neck and cut trachea.

Meanwhile, the Accused Person who had fled the scene went and presented himself at Kabianga AP Camp later that night informing the police that he fears for his life because he has killed someone at Kabianga market (Heros Hotel)

Investigations commenced and the Accused Person was later transferred to Sosiot Police Station where after investigations were completed, he was charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code which has now been reduced to the offence of manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code.

4. I have considered the circumstances of the offence and the fact that the Accused Person pleaded guilty to the charge and save the Court's time for trial.
5. I have also considered the mitigation by the Accused Person as given to the Court on behalf of the Accused Person and especially the fact that the Accused Person is remorseful.
6. The offence of Manslaughter is a serious one and the law provides for a maximum sentence of life imprisonment.
7. In the current case, taking into account the circumstances of the case, the Accused Person is sentenced to 5 years imprisonment.
8. The period he has been in custody to be taken into account when computing the five years.
9. The Accused Person has a right of appeal against sentence within 14 days of this date (Right of appeal Explained)

DELIVERED, DATED AND SIGNED AT KERICHO THIS 26TH DAY OF NOVEMBER, 2021

A. N. ONGERI

JUDGE