



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO.31 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

JULIUS KIPKEMOI KERICH.....ACCUSED

SENTENCE

1. The Accused Person in this case pleaded guilty to a charge of Manslaughter following a successful plea bargain agreement signed on 1/3/2021.
2. The particulars of the charge were that on 6/11/2018 at KABONECH Village in KIPCHORIAN Location, KIPKELION Sub-County within Kericho County, the Accused Person unlawfully killed MICHAEL KIBET KIKWAI.
3. The facts of the case as given by the Prosecution were as follows:-

On the 6th day of November, 2018 at about 1600hrs, the Accused Person who was hawking samosas at a place called Corner – C met his friend the deceased.

The deceased requested the Accused to buy his shoes that he was wearing since he did not have money to go and buy alcohol.

The Accused then asked the deceased what he will wear after buying his shoes but the deceased suggested and requested the Accused to go and give him other shoes from his house to wear.

They agreed on a price of Kshs.300/= which the Accused paid the deceased and they exchanged their shoes.

The Accused was by then wearing the shoes belonging to his Uncle called Evans Ruto which he intended the deceased to use for walking up to the Accused Person's house where he was to be given other shoes.

The Accused and the deceased never went straight to the Accused Person's house, they first of all went to take changaa at the home of one Geoffrey Bett then left and went to take busaa at the home of Philip Rangony.

While still at the home of Geoffrey Bett taking Changaa, they met the Uncle of the Accused, Evans Ruto and asked him why the Deceased was wearing his shoes.

The Accused explained to him that it was temporary arrangement after he sold him his shoes.

After taking busaa, they went to the house of the Accused at around 5.00pm. There were children playing football nearby and they heard the deceased tell the Accused "lets go to your house I pay you your money and you give me back my shoes" as they passed them entering the Accused Person's house.

While at the door, the Accused could be heard telling the Deceased "you have to pay me all the money and the previous debts otherwise you will not get back your shoes".

They started quarrelling while inside the Accused Person's house.

They quarreled for about an hour then a fight ensued between them.

As they were fighting, the Accused grabbed a sword which was on the cupboard and used it to stab the deceased on his back

inflicting a very deep wound.

The Deceased then ran away and could be heard by the children playing football saying, “amenidunga, amenidunga” and blood could be seen oozing from his back.

The Accused also came out of his house holding the sword saying, Mimi sio dongo nitaua mtu”, meaning I am not a fool, I can kill someone.

The Deceased who was running away without shoes ran out of energy and collapsed along a footpath and died a few minutes later.

Neighbours who were passing the footpath saw the motionless body of the deceased lying down and informed others who went to the scene.

They informed the police at Kipkelion through a phone call and police arrived at the scene and found the deceased’s body lying along a footpath leading to Kipkelion market facing up and in a pool of blood. It had a cut wound on the back.

The body was taken to Siloam Hospital Mortuary where post mortem was conducted by Dr. Wesley Rotich who noted that there was a deep stab wound on the back of the body of the deceased that was penetrating to the chest at the 10th intercostal space.

The Doctor then formed the opinion that the cause of death was massive internal bleeding due to penetrating chest trauma by a sharp object.

The police went to the home of the Accused the same day later in the night and found him sleeping. They arrested him and took him to Kipkelion Police Station where after completion of investigations, 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. The Probation Officer filed a social inquiry report which is undated but filed in Court on 8/7/2021 which I have duly considered.
5. I find that the Accused Person and the deceased were friends who used to drink together and further that the two fought after they had been on a drinking spree and after quarrelling over a pair of shoes the deceased had sold to the Accused Person.
6. There is evidence that the two were intoxicated during the skirmish although it is not clear whether the Accused Person sustained injuries on his eyes during the fight as he alleged.
7. The Accused Person has been in custody since 8/11/2018 when he was first arraigned in Court. That is a period of three years.
8. I also find that Accused Person pleaded guilty to a lesser charge of Manslaughter and he saved this court’s time which the trial would have taken.
9. I have taken into consideration the mitigation given on behalf of the Accused Person by his Counsel especially the fact that the Accused Person is remorseful for the offence he committed.
10. I find that this case is suitable for a non-custodial sentence.
11. I accordingly placed the Accused Person on Probation Sentence for a period of three years on condition that he complies with the requirements imposed by the Probation Officer.
12. The County Probation Officer to organize for counselling and supervision of the Accused Person during that period.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 19TH DAY OF NOVEMBER 2021.

A. N. ONGERI

JUDGE