



Republic v Koech (Criminal Case 35 of 2019) [2020] KEHC 9218 (KLR) (17 June 2020) (Sentence)

Neutral citation: [2020] KEHC 9218 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE 35 OF 2019
AN ONGERI, J
JUNE 17, 2020**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPH KIBET KOECH ACCUSED

SENTENCE

1. The Accused person in this case, Joseph Kibet Koech (hereafter referred to as the Accused person) was charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#) which was reduced to manslaughter contrary to section 202 as read with section 205 of the Penal Code following a plea bargain agreement signed by the Accused person on 18/1/2021.
2. The particulars of the charge of manslaughter are that on 11/8/2019 at Matitatu village, Londianisub county within Kerichocounty, the Accused person unlawfully killed Daniel Koech.
3. The facts of the case as given by the prosecutor were as follows;

On the material day of 11th August 2019 at around 12.00pm, the deceased (Daniel Kiplangat Koech) and his wife Mercy left their home at Mititatu village and proceeded to Makutano market. At Makutano, the deceased went to drink chang'a while his wife Mercy Chepkemoi Koech was selling vegetables on the market. In the evening at around 5.00pm, Mercy went to take her husband the deceased so that they can go home together. The deceased seemed drunk by that time and Mercy left him on the way and proceeded home.

On his way home, the deceased was joined by the accused, who are neighbours and relatives. As they were proceeding home, the deceased and the accused met Rachael Chepkemoi who is also a sister to the deceased. Mercy found them as they were standing on the way, arguing over something. Rachael greeted them and passed them on her way.



Before Rachael could go far, he heard someone shouting. She (Rachael) turned and saw the deceased lying on the ground (accused throwing a stone at the deceased which hit the deceased on the head). Rachael ran to where they were. When she reached, she realized that the deceased was injured on the head and he was bleeding from the injured head. Rachael administered first aid on the deceased. A boda boda rider came to the scene and assisted in carrying the deceased. Since he could not support himself in the motor cycle. Rachael assisted in supporting him on the motor cycle which proceeded to Mitiatu Center.

When the accused left the scene, he proceeded to his brother's home at Mitiatu where he met his brother Samuel Kipkirui Koech at around 7.30pm. The accused also seemed drunk. The accused told his brother (Samuel) that he had disagreed with his neighbour the deceased over a conversation about the accused's wife who had separated with the accused since December 2018. After the quarrel, the accused reported that he had been cut with a panga by the deceased and at that time he had a panga which he alleged that it was the deceased's and that he disarmed him while they were fighting.

Samuel checked his brother and realized that he had not cut or injury to suggest he had been cut with a panga. The accused told Samuel that in the fight, he had hit Daniel with a stone on the head and that the deceased had been carried home on a motor cycle. Samuel Sent his son to go and check the condition of the deceased who is just a neighbour. When the son came back he reported that he had seen the deceased being taken to his house.

On the 12th day of August 2019 at around 0400hrs, the deceased was found dead in his kitchen where he had spent the night. The matter was reported to the police at Londiani police station where a joint team from DCI and Kenya police Londiani led by the DCIO and the acting OCS visited the scene. The body was found lying on the floor and covered with a blanket. The injury was visible and indication that the deceased was hit with an object. The scene was processed and the body taken to St. Joseph's hospital for preservation and post mortem.

Post mortem was done on 16th day of August, 2019 which revealed that the deceased had died of severe head injury leading to epidural hematoma plus anchal herniation.

The accused fled when he realized that the deceased had died and went to his relative's home at Sirikwa. It was later on 15th August 2019 when the relatives learned about the deceased's death and took the deceased to the police at Sirikwa.

Later the accused was taken to Londiani police station where he was processed and on 16th day of August 2019 and was then 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.

The accused slapped the deceased again on the left shoulder this annoyed the deceased who tried to grab the panga that the accused had in his hand but missed, the accused then cut the deceased on the left side of the neck and the deceased fell down as he tried to cut him a second time the panga was held from behind by PW1 one Josephat Kiprono Mutai who managed pull back the accused and tried to disarm him but he freed himself and fled to a nearby forest still with the said panga. By this time a crowd had gathered and raised alarm. The deceased was first rushed to Sigowet Sub-County Hospital but referred to Siloam Hospital where he was confirmed dead on arrival by the doctor.



Postmortem was conducted by Dr. Langat who formed the opinion that the cause of death was cardiac arrest and multiple organ failure due to hemorrhagic shock due to bleeding extremely.

Meanwhile the accused person who had run away to hide in the forest after the incident got wind of the deceased's death and went to area assistant chief to surrender where he was later handed over to Sondu Police Station.

The accused was then charged with the offence of murder contrary to section 2013 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. In mitigation counsel for the Accused person submitted that the Accused person is a 50 year old man and a father of 9 children.
5. Further that as a result of this case, the children are not in school due to lack of school fees.
6. The Accused person has a sickly wife who is not able to take care of their children.
7. The Defence counsel also said in mitigation that the Accused person is remorseful for the offence he committed and he is seeking leniency from the court.
8. The reason for the attack was that the deceased had an affair with the wife of the accused person. Further that the family is in the process of reconciliation.
9. The Probation Officer filed a social inquiry report where he stated that the Accused person is a casual labourer with 8 children. He is aged 50 years.
10. The Report also stated that the accused person is not suitable for a non-custodial sentence since the community is not ready for him.
11. I have taken into account the circumstances of this case and the mitigation given on behalf of the Accused.
12. The offence of manslaughter is a very serious one and carried a maximum sentence of life imprisonment.
13. The Accused person is sentenced to 10 years imprisonment.
14. The sentence to start running from 10/8/2019 when the accused person was first arraigned in court.
15. The Accused person has a Right of appeal against sentence within 14 days of this date (explained).

DELIVERED, DATED AND SIGNED AT KERICHO THIS 17TH DAY OF JUNE 2020.

A. N. ONGERI

JUDGE

