

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO.14 OF 2019

REPUBLIC.....PROSECUTION

VERSUS

ERICK KIPROTICH BII.....ACCUSED

SENTENCE

1. The accused person stands convicted of the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code after entering a plea bargain agreement with the State to reduce the charge from murder to manslaughter.
2. On conviction the State said that they did not have previous record and asked the court to treat him as a first offender.
3. In mitigation, Ms Dela Wilbey for the accused stated that accused was a young man aged 24 years, who was not able to complete High School because parents were poor. He however, put up a kiosk at his father's homestead where he makes ends meet and bought a motor bike for business.
4. Counsel emphasized that on the fateful night the deceased was the intruder and went to the house of the accused and tried to force himself in while armed with a machete. The accused thus rushed to the kitchen and took a knife in self defence and managed to stab the intruder. Counsel stated also that in that village, there were many incidences of insecurity.
5. Having considered the circumstances of the incident and the mitigation circumstances, I am of the view that a custodial sentence is not called for as the deceased was the intruder at night in the darkness of the home of the accused, and there is no evidence that the accused knew the purpose of this dangerous intrusion in the dark at night and whether the deceased was alone or what weapon he carried. The deceased was also found with a machete. The pre-sentence report which I have received today also recommends non-custodial sentence.
6. I thus discharge the accused, as the period he has been in custody in my view, is sufficient confinement.

Dated at Kericho this 28th day of November 2019.

George Dulu

JUDGE