



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KABARNET**

**HCCR NO. 45 OF 2017**

**(Formerly Eldoret HCC 66/2016)**

**REPUBLIC.....RESPONDENT**

**VERSUS**

**NICKSON TALLAM.....ACCUSED**

**JUDGMENT**

1. The accused pleaded guilty to the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code following a plea bargain agreement reducing the initial charge of murder contrary to section 203 as read with 204 of the Penal Code.
2. The court noted the accused's certificate of fitness to plead dated 12/10/16 and upon examination confirmed the voluntariness of the plea bargain agreement. The accused confirmed and accepted the facts of the case presented by the prosecution as follows:

**FACTS**

“The deceased and the accused herein were neighbours and they used to do casual jobs together. On the 9<sup>th</sup> day of September, 2016, the accused herein went to the house of where he was to get a job of putting up a fence around his shamba. When he reached there, he found other people who had also come for the same job. The deceased was one of the people. The workers were separated into two groups and the accused and the deceased worked in their different groups. After the accused group finished fencing their portion at around 2.00 pm, they started drinking busaa in the shamba and later went to their employer's house for lunch. They found the deceased and another in the homestead of the employer as they had also gone for lunch. As they were at the homestead of their employer, the deceased snatched a 50 shilling note from the accused which was at the shirt pocket. The accused got annoyed and picked a panga which had put at the fence and cut the deceased once on the neck and ran away. He reported the matter to a village elder and was arrested by the chief the following day. He was taken to Marigat police station. The deceased died on the spot and the body was collected by police from Marigat police station and taken to Kabarnet District Hospital mortuary. Postmortem was done in the said hospital on the 27<sup>th</sup> of September, 2016 and the cause of death was established to be deep neck cut due to sharp force trauma following assault. The accused was charged with the offence of murder which has now been reduced to manslaughter. The accused was thereafter presented before the doctor at Moi Referral Hospital for mental assessment who confirmed he was mentally fit to stand trial.”

3. Upon conviction, the prosecution stated that it had no records on the accused and urged that he be treated as a first offender. The defence counsel urged in mitigation that the court grants the youthful offender a second chance in life by granting a non-custodial sentence pointing out that the accused committed the killing while drunk. It was urged that the accused had been in custody for over 1 year while awaiting his trial.
4. The Pre-sentence Report by the Probation Office was rejected for community based rehabilitation citing local Administration's objection on the accused as a problematic person with long history of anti-social behavior. DPP left the matter to the court.

**Determination**

5. In accordance with *Kyalo v. R* (2005) KLR 325, the court must exercise conviction in adopting the Probation Officer's Report on pre-sentencing, as the contents hereof have not been tested by Cross-examination. The court could only properly rely on the alleged anti-social behavior of the accused if it was manifested in a previous convictions or other relevant evidence which could be proved in accordance with section 329 of Criminal Procedure Code (or 216 of Criminal Procedure Code for the Subordinate Court)
6. However, the court takes serious view of the prevalent killings in the area resulting from 'busaa' drinking with partakers engaging in quarrel and fighting some which have had fatal consequences.

From such cases of manslaughter in circumstances of drunkenness, the court has imposed a sentence of imprisonment for 8 years. I do not see any circumstance in this case that would lead the court to depart from this position.

7. Although the accused is a young man of 26 years with longer life, ahead of him, the need for deterrence for this prevalent crime dictates that a custodial sentence be imposed. It is considered that the period of the sentence, with remission for good conduct, would still afford the young offender a second chance in life after completion of the sentence. Moreover, the court will in accordance with section 333 Proviso of the Criminal Procedure Code take into account the period that the accused has been in custody.

**Orders**

8. Accordingly, having convicted the accused for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code, the court sentences the accused to serve imprisonment for 8 years to be reckoned from the 4<sup>th</sup> October, 2016 when the accused was first remanded awaiting trial in the matter.

DATED AND DELIVERED THIS 21<sup>ST</sup> DAY OF MARCH 2018

**EDWARD MURIITHI**

**JUDGE**

**Appearance**

Mr. Miyenda for Mr. Kipnyekwei for Accused.

Ms. Macharia Ass. DPP.