



**REPUBLIC OF KENYA**

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

**HCCR NO. 44 OF 2017**

**[Formerly Eldoret HCCR 59 of 2016]**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**LEONARD CHEPTUMO CHEPTOO.....ACCUSED**

**JUDGEMENT**

1. The accused pleaded guilty to the offence of man slaughter Contrary to Section 202 as read with 205 of the Penal Code following a plea bargain reducing the initial charge of murder Contrary to Section 203 as read with Section 204 of the Penal Code.
2. The facts of the case which the accused accepted as true upon entry of plea of guilty are as set out at paragraph 7 of the plea Agreement as follows:

**“FACTS**

*On the 25<sup>th</sup> day of July, 2016, at around 1.00 pm the accused, deceased and other people were taking ‘busaa’ at the homestead of one Samson Chemwotei. During that time, the deceased and the accused were sitting together and were discussing issues that could not be heard by other people. At about 8.00 pm the deceased left the place while the accused followed her without uttering a word. While on the way, the two of them argued over Ksh. 100/= which the deceased had allegedly snatched from the accused. A fight ensued between the two and the deceased was overpowered by the accused. The accused took a lessa from the deceased which he used to strangle her. On the 26<sup>th</sup> day of July, the deceased body was found by members of the public who called the police. The body was taken to Kabarnet Referral Hospital Mortuary. Post-Mortem was conducted on 3<sup>rd</sup> of August, 2016 where it was established that the deceased cause death was Asphixia due to strangulation. The accused was thereafter arrested and he did not deny having killed the deceased. He was taken to court and charged with murder which has now been reduced to manslaughter. The accused person was thereafter presented before the doctor at Moi Teaching and Referral Hospital for mental assessment who confirmed that he was mentally fit to stand trial.”*

3. The court noted the accused’s certificate of fitness to plead dated 3/4/2017 and also voluntariness of the plea agreement and therefore accepted the plea of guilty to the charge of manslaughter, and convicted him accordingly.
4. In mitigation, the accused’s Counsel urged the court to consider the youthful age of the accused, his remorse for the killing of his close friend which he said was as a result of drunkenness and his responsibility as a breadwinner for his aging mother and grandmother and his two children.
5. The DPP did not oppose non-custodial sentence proposed by the Probation officer’s Report of 14/12/17 whose recommendation.

**“Recommendation**

*Considering that the two families reconciled after cooperation and tension no longer exist among them, the accused may be allowed to serve non-custodial sentence for a period the Honourable court deem fit”.*

**Determination**

6. The court has considered that this yet another of numerous death occasioned by attacks or fights during or following drinking sprees in the county which must be discouraged. Although there is lack of intention and the accused are usually first offenders renders, the court has a responsibility to the society to aid in combating from drink-occasioned deaths and another violence by meting out deterrent sentence. This

court as in many previous cases imposed a sentence of 8 years imprisonment, and there is no reason to depart from this position in this matter.

7. I do not consider that a non-custodial sentence shall meet the justice of the case in affording deterrence for the accused and others similarly pre-disposed to drinking and thereafter engaging in violence assaults. I accordingly unable to accept the recommendation for non-custodial sentence.

**Order**

Accordingly, having convicted the accused on his own plea of guilt for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code, I sentence the accused to serve imprisonment for 8 years, the time being reckoned from 28/8/2016 when he was remanded in custody pending trial.

Right of appeal.

**DATED AND DELIVERED THIS 20<sup>TH</sup> DAY OF MARCH 2018**

**EDWARD MURIITHI**

**JUDGE**