

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

HCCR NO. 11 OF 2017

FORMERLY ELDORET HCCR NO. 25 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

VICTOR KIPCHUMBA KANGWONY.....ACCUSED

JUDGMENT

1. The accused was convicted on his own plea of guilty to the offence of manslaughter 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 204 of the Penal Code.
2. Before convicting the accused the court established that the accused was fit to plead as indicated by Psychiatric doctor's Certificate dated 19/3/2015 and that the plea agreement was voluntarily entered into and that he accepted the facts of case as presented by the prosecution.
3. The facts accepted by the accused upon his plea of guilty were as follows:

The accused and the deceased in this matter had been friends for a long time. However, they started disagreeing over the love of one woman by the name Gladys Chelimo who had been married to the deceased but they had separated. The accused used to visit the home of the deceased's ex-wife and this made the deceased suspect accused had an affair with his ex wife. On the 7th day of March, 2015 at about 5.00pm, the accused and the deceased had been drinking 'Busaa' when on their way home they disagreed over the same issue of the deceased's ex-wife and they started fighting. The deceased picked a stone and hit the accused on the head and he started bleeding. The accused in retaliation picked a stone and hit the deceased on the head who fell and became unconscious. The deceased was taken to Kabartonjo District Hospital where he was pronounced dead on arrival. The accused was also arrested at the scene and was escorted to Kabartonjo AP camp and later to Kabarnet police station. He was escorted to Kabarnet District Hospital where he was treated and discharged. The accused was later charged with murder which has now been reduced to manslaughter. The body of the deceased was taken to Kabarnet District Hospital where post mortem was done on the 17th of March, 2015. The doctor formed an opinion that the cause of death was head injury due to blunt force trauma to the left temporal region. The accused person was thereafter presented before the doctor at Moi Teaching & Referral Hospital for mental assessment who confirmed he was mentally fit to stand trial.

4. The deceased and the accused had been drinking busaa when an argument and fighting ensued about the deceased's ex-wife whom he suspected was having an affair with the accused. The deceased is said to have been the aggressor and the accused retaliated hitting the deceased with a stone and inflicting the fatal blow.
5. The circumstances of the offence is, again as prevalent in this region, a drinking outing for which disagreement leading to fights ending up in killing of one of the antagonists. The court considers deterrence as appropriate objective of the sentencing in these cases and has in previous trial imposed a sentence of 8 years in similar circumstances. There is nothing in this case that warrants the court to depart from this position.
6. The Probation Officer's pre-sentence report dated 24/10/17 is negative for non-custodial sentence in view of deceased family's bitterness. The accused is a young man of 26 years whose productive life is ahead of him. However, for deterrence the accused must be punished appropriately allowing for his re-entry into the society to undertake productive life.

Orders

7. Accordingly, having convicted the accused for manslaughter contrary to section 202 as read with 205 of the Penal Code, the court sentences the accused to imprisonment for 8 years from the date of remand awaiting trial on 23/3/2015.

DATED AND DELIVERED THIS 20TH DAY OF MARCH 2018

EDWARD MURIITHI

JUDGE

Appearances:

Mr. Chepkilot for Mr Tarus for Accused.

