



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO.14 OF 2009**

**REPUBLIC - PROSECUTOR**

**VERSUS**

**ALFRED KIPKORIR CHERUIYOT - ACCUSED**

**SENTENCE**

Alfred Kipkorir Cheruiyot, the accused herein, was initially arraigned before this court on the information of the Honourable Attorney General dated 13<sup>th</sup> March 2009 to face a charge of Murder contrary to Section 203 as read with Section 204 of the Penal Code. The accused pleaded not guilty to the aforesaid charge. The accused's learned counsel and the learned State counsel, commenced negotiations which gave rise to the plea agreement dated 13<sup>th</sup> March 2013 in which the accused agreed to plead guilty to the lesser charge of manslaughter. Pursuant to the plea agreement, the charge of Murder was withdrawn and substituted with that of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The particulars of the offence are that on 1<sup>st</sup> day of March 2009, at Simoti village in Bureti District within Bomet County it is said that the accused unlawfully killed Geoffrey Kipkoech Cheruiyot. The accused pleaded guilty to this charge and thereafter proceeded to confirm the facts as outlined by the learned State counsel.

The accused was thereafter convicted by the Honourable Mr. Justice Mutava. The honourable judge invited the defence learned counsel to make submissions in mitigation and thereafter called for the District Probation Officer to prepare and submit a pre-sentence report. The honourable Mr. Justice Mutava is not in a position to sit at the moment hence the case was placed before me to proceed from where he left. By dint of Section 200(3) as read with Section 201(2) of the Criminal Procedure Code, I am enjoined to pass the sentence in the circumstances of this case.

I have carefully considered the mitigating facts submitted by Mr. Koskei, learned defence counsel. Mr. Koskei stated that the accused is remorseful and that he has been in custody for four years. It is also pointed out that he is a first offender hence he should be treated with leniency. I have also considered the Pre-sentencing report prepared by the District Probation Officer, Bomet dated 22<sup>nd</sup> April 2013. It is recommended by the Probation Officer that a non-custodial sentence be meted out to promote family reconciliation and counseling of the accused.

The facts outlined in the plea agreement clearly show that the accused and the deceased were brothers. The duo appear to have had a dispute over who is entitled to harvest trees on their father's land. The deceased died as a result of injuries inflicted by a panga thrown at him by the accused. The accused avers that he acted in self-defence against his brother who was armed with an axe, panga, metal bar and a rungu. I think in the circumstances, the accused had very limited options in defending himself from a brother who was armed to the teeth. The question which I must grapple with, is what is the appropriate sentence? Under Section 205 of the Penal Code, the offence of Manslaughter attracts a maximum sentence of life imprisonment. What has caught my attention is the Probation Officer's recommendation that if the accused is given a non-custodial sentence, reconciliation may take place. I have already stated that the victim is a brother to the accused and the offence was committed within the family land. I think the Probation Officer's recommendation appears to be reasonable. The loss of a brother will obviously haunt the accused for many years. The accused has to undergo traditional cleansing in order for him to be fully accepted in his society. The accused is remorseful and has been in custody for close to five years.

In the circumstances, the sentence that commends itself should be non-custodial. I hereby order that the accused person be released from custody and order that he serves 3 years Probation under the supervision of District Probation Officer, Bomet. During this period, the accused should be of good behaviour.

Dated, signed and delivered in open court at Kericho this 18<sup>th</sup> day of July 2013

J. K. SERGON

JUDGE