



**Republic v Konchellah (Criminal Case E010 of 2023)
[2025] KEHC 2416 (KLR) (6 March 2025) (Sentence)**

Neutral citation: [2025] KEHC 2416 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CRIMINAL CASE E010 OF 2023
CM KARIUKI, J
MARCH 6, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

MOSES OLOROPIL KONCHELLAH ACCUSED

SENTENCE

1. The accused is charged with an offence of murder under Section 203 of the [Penal Code](#) Cap 63 Laws of Kenya.
2. He pleaded not guilty, and matter went for pre-trial directions whereby the accused's advocate and the prosecution sought time to engage on plea bargain process with a view to enter into a plea bargain agreement.
3. The agreement aforesaid was arrived at and the information of murder was substituted with a charge of manslaughter of which the accused pleaded guilty to thus plea of guilty entered. Facts were read to the effect that:

“On the 6th of November 2023 at about 2100hrs, the deceased and others were at a video hall awaiting to watch a premier league football match. They sat in a bar adjacent to the hall awaiting the start of the match. The deceased was in the company of Dickson Tajeuo and Leshion Kiptigon.

4. A few minutes later, the accused walked into the bar appearing drunk. He drew his knife and attempted to stab Leshion who dodged the knife and left the bar. Tajeuo and the deceased got concerned and questioned him on what the problem was. They directed him to leave and go home immediately and the accused complied.



5. While Tajeuo and the deceased were walking, the accused out of the bar, the accused turned on the deceased and stabbed him with a knife on the right side of the chest. The deceased fell on the ground with blood oozing from his chest from the stab wound. Tajeuo asked a motorcycle rider who was nearby to assist him take the deceased to hospital and as they were assisting the deceased onto the motorcycle, the accused came from behind and stabbed Tajeuo on the head and took off.
6. Tajeuo and the deceased were rushed to hospital where the deceased succumbed to the injuries. The accused was arrested by members of the public”.
7. He admitted the same facts and the court thus convicted him on his own plea.
8. The prosecution informed the court that there was no previous record thus accused could be treated as a first offender.
9. In mitigation, the accused’s advocate informed court that the accused is a 23-year-old youth married with 2 children and sole breadwinner of the same young family. That he is remorseful for the loss of life arising from his unlawful act.
10. He seeks forgiveness from the victim’s family, community and the court. He promises that he will not re-offend in future. He seeks to be given a second chance to be useful to the community. He also desires to take care of his young family.
11. That he is ready to initiate reconciliation with victim’s family who are currently positive about it provided it is in line with Maasai culture. They are said not to harbor any grudge thus the court urged to accord accused leniency and also grant a non-custodial sentence as both victims and accused’s family have a possibility for reconciling.
12. The PCR filed indicates that the accused’s Family have never extended an olive branch for reconciliation with victims’ family though the later harbors no grudge against accused but leaves to discretion of the court to award suitable sentence.
13. As pertains community attitude, the prevailing environment is not favorable for the offender being awarded a non-custodial sentence. The local chief is said know the accused as a person of mischievous character fond of conflicts and fights within the community. He believes awarding accused non-custodial sentence may not augur well with the rest of the community members. He described the accused as a thorn in the flesh who caused a lot of harm in the community and his family. He needs jail term for good rehabilitation. He also fears the offender’s security which cannot be guaranteed.
14. In Kenya, the key principles of sentencing include proportionality (sentences matching the gravity of the offense), equality (similar offenses receiving similar sentences), accountability (clear reasoning behind sentencing decisions), community protection, rehabilitation, and denunciation (conveying societal disapproval of the crime), all aiming to ensure fairness and justice while considering the offender’s circumstances and the impact of the crime on the victim and community.
15. The circumstances of the case were that (per admitted facts) the drunk accused attempted to stab victim in a bar with any provocation or no apparent reason at all. However, the victim dodged the knife and victim and another escorted him out of the bar questioning him about what the problem was. They directed him to leave and go home.
16. However, as the victim with another ware walking out of the bar, the accused turned on deceased and stabbed him with a knife on the right side of the chest. The deceased fell on the ground with blood oozing from his chest from the stab wound, he was rushed to hospital via a motorcycle.



17. The accused also from behind stabbed Tajeuo on the head and took off. Tajeuo and the deceased were rushed to hospital where the deceased succumbed to the injuries.
18. Nowhere is it stated the accused was provoked by the two victims nor does he give a reason as to his own act.
19. However, PCR page 2 on circumstances of the offence indicated there was misunderstanding over spilled alcohol and fight ensued. As victims struggled with accused, using his Maasai sword thus the offence was committed. The accused was also injured in the struggle. The defense has not alluded to the theory advanced by the PCR but relied on facts which in fact do not mitigate accused acts as justified.
20. The court has read the entire record, the reports, the plea agreement reports, the mitigations and find that, in all the circumstances and views expressed, I find the accused does not deserve a non-custodial sentence. Maybe the case ought to have been tried as a murder.
21. However, as the situation seems to have calmed down, the best court can do is to award the accused a combination of custodial and non-custodial sentences to enable the accused to be fully rehabilitated and acquire good character and reform learn to live without being violent. Thus, the sentences are as follows.
 - i. The accused will serve five (5) years imprisonment and thereafter three (3) years' probation.
 - ii. Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS HIGH COURT ON 6TH DAY OF MARCH 2025.

CHARLES KARIUKI

JUDGE

In the presence of:

Court Assistant: Mr.nyangaresi

