



**Republic v Tanui (Criminal Case 29 of 2020)  
[2024] KEHC 900 (KLR) (5 February 2024) (Sentence)**

Neutral citation: [2024] KEHC 900 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CRIMINAL CASE 29 OF 2020  
SM MOHOCHI, J  
FEBRUARY 5, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**WESLEY KOECH TANUI ..... ACCUSED**

**SENTENCE**

1. The accused was initially charged together with another, with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*; upon a Plea Bargain Agreement being entered the charge was then reduced to manslaughter;
2. The Plea Bargain Agreement dated 12<sup>th</sup> May, 2023 was adopted by the Court upon it being satisfied that the accused had understood the contents and that he had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion;
3. The accused was accused of having unlawfully killed Robert Kipkemoi Sigei on the 26<sup>th</sup> day of July, 2020 at Masaita Village, within Kuresoi North Sub-County in Nakuru County; the accused was convicted on his own plea of ‘Guilty’ to the offence of Manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*;
4. At the hearing hereof, the accused was at all times represented by Learned Counsel Ms. Otokoma Advocate whereas Ms. Jackie was the Prosecuting Counsel for the State; both counsels were invited to make submissions before sentencing was passed;
5. Prosecuting Counsel for the State submitted that, on 25<sup>th</sup> July 2020 at around 5:00pm, the deceased had gone to take illicit brew in a nearby house within the village. He met the convict and the second accused person fighting one person known as Leonard. The deceased then tried to separate them and Leonard got a chance of escaping, the two then started assaulting the deceased and hit him using a stick on the head who fell down unconscious.



6. The deceased was rushed to hospital by members of the public. He was in critical condition he then succumbed to the injuries on the same day in the evening. A post-mortem was conducted on 3<sup>rd</sup> August 2020 when the cause of death was head injury inflicted by a blunt object. A report was made at Kuresoi Police Station where the two were arrested and arraigned in Court on an information of murder.
7. The accused person was then charged with the offence of murder, which is now substituted with the offence of Manslaughter. The exhibits are produced in support of the charge as, post mortem report-Exhibit,1 the prosecution had no previous records of the accused and he may be treated as a first offender;
8. The Prosecution recommends a two (2) year custodial sentence.
9. The accused had from the onset of his trial been ready and willing to enter a plea of guilty; his behavior showed signs of remorse; from the facts of the case the State was seeking a custodial sentence and proposed that he be granted a term of two (2) years imprisonment;
10. In mitigation counsel for the convict associated himself with the prosecution's submissions that the convict in accepting the Plea Bargain Agreement had not wasted the Court's time; he was extremely remorseful and that the this was a matter with unfortunate circumstances, the convict was involved in a fight together with his co-accused against a third party, the deceased intervened as a good Samaritan and was thus attacked and fatally injured.
11. That the Pre-sentence report is favorable and buttresses the case for a non-custodial sentence.
12. That the Victim family has been approached by the accused for a traditional reconciliation which process started with a cow being presented and that they harbor no animosity and are not against the convict's rehabilitation; counsel for the defence prayed for a lenient sentence of two (2) years preferably a non-custodial sentence on the grounds that the community was not hostile

### **Analysis**

13. It is the duty of this Court to impose a sentence that meets the facts and circumstances of the case; this Court has considered the full circumstances of the offence which is contained in the Facts; The fight on the fateful night was between the convict, his co-accused and a 3<sup>rd</sup> party and the deceased intervened by a good Samaritan only to be attacked and fatally injured.
14. The applicable law on sentence for the offence of manslaughter is found under the provisions of Section 205 of the *Penal Code* which reads as follows;

‘Any person who commits the felony of manslaughter is liable to imprisonment for life’
15. The section provides for the maximum sentence, that is life imprisonment; this Court has taken into consideration the aggravating circumstances in that the convict together with his co-accused attacked and fatally injured the deceased who was a Good Samaritan intervening to stop the fight ongoing; the level of senselessness in attacking a Good Samaritan long after the victim of the fight had fled is indicative of the uncontrolled violence.
16. The mitigating factors taken into consideration by this Court are that the accused readily pleaded guilty and thus saved on judicial time; also taken into consideration are the personal circumstances of the accused that he has also expressed his remorse and is deemed to be a first offender;



## **Findings and Determinations**

17. I am satisfied that the convict should be given a chance to serve a non-custodial sentence. I noted that the convict indicated to the Probation Officer that he will be willing to serve a Probation term. In the circumstances, I will sentence the convict to a probation term of three (3) years from the date of delivery of this ruling. During this period, he shall be under the supervision of a Probation Officer Nakuru County. He is cautioned to adhere to the following terms:
- i. The Appellant should observe the following:
    - a. The Appellant is warned that Probation sentence is not an acquittal or discharge but a legitimate punishment and therefore she should be careful to diligently serve the sentence as required by the Court and probation.
    - b. He will obey the Probation Officer supervising him and adhere to all the conditions or terms set as part of that supervision.
    - c. He should be of good behavior and not commit any penal offence during the pendency of her sentence.
  - ii. The Appellant is warned that failure to abide by Any of the terms under 1) above will result in the Appellant's arrest and committal to an imprisonment term.

Orders Accordingly.

**DATED, SIGNED AND DELIVERED AT NAKURU ON THIS DAY OF 5<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**S. MOHOCHI**  
**JUDGE**

