



**Republic v Kamau (Criminal Case 29 of 2020)
[2024] KEHC 3077 (KLR) (13 March 2024) (Sentence)**

Neutral citation: [2024] KEHC 3077 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE 29 OF 2020
CW GITHUA, J
MARCH 13, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ELIUD KUNGU KAMAU ACCUSED

SENTENCE

1. The accused, Eliud Kungu Kamau was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
He was subsequently convicted on his own plea of guilty with the lesser offence of manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#) under a plea bargaining agreement executed on 2nd August 2023 and filed in court on 8th August, 2023.
2. The particulars supporting the charge are that on 31st October 2020 at Kiaguthu village, Kahuro Sub-County within Murang'a County, the accused unlawfully caused the death of Obadia Munyoroku Kamau.
3. The facts of the case are that the accused and the deceased are brothers and on the aforesaid date and place, the accused was at his home engaging in farm work when the deceased went to him and requested to be given Kshs 100 to pay people who had given him a ride on their motorcycle. Accused offered him Kshs 50 but the deceased insisted on being given Kshs 100. As they could not agree, the deceased left for Kiaguthu Trading Centre.
4. The deceased returned to the accused's home at around 7:30 PM and continued demanding to be given Kshs 100. The accused borrowed Kshs 50 from his wife and gave it to him but the deceased rejected it saying he now wanted Kshs 300. When the accused declined, the deceased took a stick and started attacking the accused aiming blows on his head which the accused blocked using one of his hands and



using the other hand, he picked a stone from the ground and hit the deceased with it on the side of his head and at the same time raised an alarm.

5. As the fight between the two escalated, the accused took a fork jembe and hit the deceased with it on the head. The deceased fell and members of the public who had gathered reported the matter to Kahuro police station. When police officers went to the scene, they found that the deceased had already died. They took his body to Muriranjias hospital mortuary.

An autopsy conducted on the body established the cause of death to be severe head injury secondary to a sharp object trauma.

After close of investigations, the accused was arrested and charged with the offence of murder which was later substituted with the offence of manslaughter.

6. In the plea in mitigation offered by his learned counsel, Ms Kinyua, the accused stated that he was a first offender and that he was very remorseful for what he did. He averred that he was a peaceful man and only acted in self defence; that the victim's family had forgiven him and were ready to take him back.

Further, the accused urged me to consider the time he had spent in lawful custody and grant him a lenient sentence preferably a non – custodial sentence.

7. The pre-sentence report filed on 6th March 2023 confirmed the facts of the case as narrated by the prosecution and admitted by the accused. According to the findings in the report derived from various sources including the victim's family represented by the deceased's wife and the community the deceased and the accused hailed from, the deceased was a violent man especially when drunk and he was the one who initiated the fight that resulted in his unfortunate death. The victims family stated that they had forgiven the accused for the sake of his young children more so because they believed he did not intend to kill his brother and was only acting in self defence.

8. Whereas it is true from the facts of this case that the deceased is the one who provoked the accused into a fight, the accused's action of stabbing the deceased on the head with the sharp points of a fork jembe went beyond self- defence considering that what the deceased was using to attack him was only a stick.

9. In my considered view, if the accused was only interested in self- defence, he would have defended himself through other means that were not likely to cause the deceased fatal injuries like forcefully pushing him away considering that the deceased was apparently drunk or hitting him with the handle of the fork jembe. Stabbing him with the sharp points of the fork jembe on his head and not on any other part of his body leads me to conclude that the accused actually intended to kill the deceased.

10. Even if it is true as stated in the pre-sentence report that the deceased was a violent and troublesome man, the accused did not have a right to kill him. He deserved to live until the time that his maker terminated his time on earth. The victim enjoyed the constitutional right to life granted to all persons irrespective of their character or disposition. As a result of the accused's unlawful action, his life was cut short and it cannot be replaced.

11. It is not lost on me that manslaughter is a grave offence which attracts a maximum penalty of life imprisonment but bearing in mind the circumstances in which the offence was committed, the plea in mitigation offered on behalf of the accused and all relevant factors, I find that a custodial sentence is appropriate in this case to teach the accused and others a lesson that every life matters and is protected by the law and that actions have consequences.

Consequently, I sentence the accused to five (5) years imprisonment. The sentence shall be computed from the date the accused was first arraigned in court on 17th November 2020 since the date of his arrest is not clear from the court record.



It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 13TH DAY OF MARCH, 2024.

C.W GITHUA

JUDGE

In the presence of :

The accused

Ms Kinyua for the accused person.

Ms. Muriu for the state

Ms. Susan Waiganjo Court Assistant

