Republic v EK (Criminal Case E010 of 2022) [2024] KEHC 5084 (KLR) (15 April 2024) (Ruling)

Neutral citation: [2024] KEHC 5084 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAJIADO

CRIMINAL CASE E010 OF 2022

SN MUTUKU, J

APRIL 15, 2024

BETWEEN

REPUBLIC ..... PROSECUTION

AND

EK ..... SUBJECT

RULING

CHARGE

1. E.K, the Subject, is facing a charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. The particulars of the offence are that on the 5th May 2022 at Olgulului area in Namanga Sub-County within Kajiado County, he unlawfully killed Stephen Kisota Ntooki.

2. The Subject was initially charged with murder, but this offence was reduced to manslaughter after the parties entered into a Plea Bargain Agreement. The Subject pleaded guilty to manslaughter. The Plea Bargains proceedings were conducted on 24th January 2024.

Facts of the case

3. The facts of the case as presented by the prosecution are that on 5th May 2022 at about 8.00am, the Subject and the deceased, aged 5 years, left home to the grazing fields to herd cows and goats. The Subject was employed by Luteresh Ole Ntooki, the father of the deceased. At around 2.00pm, the deceased started sleeping. The Subject questioned him as to why he was doing so instead of helping in looking after the cattle. The deceased said that he was tired and sleepy. The Subject left the deceased to rush to bring back the goats. On returning he found the deceased asleep. He assaulted him using a stick forcing him to wake up. On their way back home, the deceased was unable to walk, and the Subject decided to carry him home on his back. They met the deceased's grandmother who questioned the Subject about what he had done to the deceased as the latter looked weak.

4. The grandmother called the deceased's father Luteresh Ole Ntooki who rushed home and took the deceased to Namanga Sub-County Hospital. They were referred to Kajiado Hospital where the deceased was admitted. He succumbed to the injuries at around 5.30pm.

5. A postmortem was conducted on 7th June 2022. The doctor found multiple bruises on the face, thighs, neck and scalp. The cause of death was due to cardiovascular arrest secondary to spinal cord injury caused by blunt force trauma. The postmortem report was produced as an exhibit (Ex. 1).

6. The Subject admitted the facts as presented as correct. This court proceeded to find the Subject culpable for the offence of manslaughter on his own plea of guilty.

Mitigation

7. In mitigation, Mrs Njagi, learned counsel for the Subject, submitted that the Subject was brought to court at the age of 15 years and that he is now aged 17 years. That he is a Tanzanian national who had been employed by a Kenyan family of Maasai background. That he was kind enough to carry the deceased and take him home to his grandmother and did not escape or resist arrest. That upon his arrest, the two families met and discussed how to resolve the matter and a penalty was issued to his family to compensate the deceased's family with 49 head of cattle.

8. Counsel submitted that an agreement to that effect was signed on 9th June 2022. That she wrote to the ODPP on 29th July 2022 asking that the matter be referred for AJS given that the two families had resolved the matter. That the ODPP preferred to have the matter subjected to Plea Bargaining according to the law.

9. It was submitted that the Subject has been remorseful over the events that led to the death of the deceased; that he has lost the opportunity to continue with school; that he had been in Form 1 when he was employed and that he has lost on cultural events when he was in custody. It was submitted that the Subject is a first offender and that he has been in custody for one (1) year and seven (7) months. Counsel asked that the Subject should not suffer double jeopardy since the family of the deceased has been compensated and that the Court should apply the Children's Act in sentencing the Subject.

10. The prosecution counsel told the court that the Subject is a first offender.

Pre-sentence Report

11. Before passing the sentence, I called for a pre-sentence report. The report was filed on 21st February 2024. I have read the report. It confirms that the Subject is a Tanzanian national from Longido over the border from Namanga.

12. The Report shows that the Subject is a drop out from school at form one (1) and that he comes from a big family of single mother after the father left home in 2006 and his whereabouts are unknown. The report confirms that the two families had started negotiating with a view to settling this matter through cultural compensation.

13. The report shows that the Subject or his family has no criminal tendencies. The Subject is remorseful and regrets the incident. I note that he has been in custody for about two (2) years.

14. The law under Article 53 of the *Constitution* and section 8 of the *Children's Act* as well as internation conventions dealing with children command this court and any other institution or individual dealing with children to consider the best interest of the child. It is without a doubt that the Subject before this court is a child in conflict with the law. This court must take his best interest into consideration in determining this matter.

15. This court has considered that the families are in the process of negotiating with a view to compensation. It is the view of the family of the Subject that imposing any other penalty is tantamount to double jeopardy for the Subject. However, the Subject must understand the seriousness of the matter before the court. Another child, too young to understand what happened to him before succumbing to the injuries inflicted on him, lost his life.

16. Section 239(1) of the *Childre's Act* lists the various methods of dealing with children in conflict with the law. In applying the law in this matter, I have taken into consideration the age of the Subject, the magnitude of the matter before the court and the fact that he is a foreigner. I have noted in the pre-sentence report that the Subject has an aunt married in Kenya who is willing to take him and ensure that he goes back to school. However, the particulars of that aunt have not been given in the report.

17. In sentencing the Subject, I will use a combination of two methods listed under section 239(1). I will and do hereby utilize section 239(1) (a) and (d) and discharge the Subject under section 35 of the *Penal Code* on condition that he does not commit another offence for a period of one year. I also commit him to the care of his aunt who is mentioned in the pre-sentence report. The details of the aunt are:

    Name: Martha Lekitony Ntoipo

    Citizenship: Tanzanian

    Identity Card: TAE2XXXX

    Telephone: 0113XXXXX

    Occupation: Farmer, Isara Village, Imbuko Location, Mashuru Sub-County, Kajiado.

    Married to: David Ole Sankori of Telephone No. 0721XXXX

18. The parties can proceed to pursue AJS in the form of compensation to the family of the deceased.

19. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 15TH APRIL 2024.

S. N. MUTUKU

JUDGE