



**Republic v Toroitich (Criminal Case 38 of 2023)
[2024] KEHC 3185 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3185 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 38 OF 2023**

RB NGETICH, J

APRIL 4, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

ISAACK KIPRUTO TOROITICH ACCUSED

RULING

1. The accused person had been charged with the offence of murder contrary to section 203 as read with Section 204 of the *Penal Code*. The particulars of the charge being that the accused on the night of 28th March, 2022 and 29th March, 2022 at Kabiyeit village of Sabatia Location in Koibatek Sub- County within Baringo County, murdered Christine Jepkorir Chebon.
2. The Applicant denied the charge upon being read over and explained to him. The case proceeded for hearing and on the 18th October, 2023, the defence counsel Mr. Mwaita informed the court that he had received information that the family of the deceased and the accused met and agreed to pursue plea bargain in the matter. The prosecution confirmed that the two families had reconciliatory talks and the prosecution had been given copies of the minutes that morning and had no objection to the parties pursuing plea bargain.
3. On the 17th January, 2024 the plea agreement was duly executed where the charge was reduced to manslaughter. On 26th February, 2024, the charge and its particulars was read over and explained to the accused. He pleaded guilty to the offence of manslaughter as provided for under section 202 as read with section 205 of the Penal Code and upon admitting the facts of the offence, he was convicted on his own plea of guilty.



Brief Facts Of The Offence

4. Facts surrounding this case are that on the 28th day of March, 2022 at 0600hrs, one Christopher Kiptoo Tallam who is cousin to the deceased went to Biwott's Bar at around 9 p.m where he met with the accused herein Isaac Toroitich and other people who were with him. He later went to his mother's house then to his house which is about 60 meters away and at about at 10:00 pm when he was asleep, he heard someone knocking his door and before he could open, the said person who is now the deceased identified herself as Mama Brian. Christopher asked her why she had gone to his house yet she had always gone to sleep at his mother's house but she did not respond. Shortly, the accused knocked the door and on being asked who he was, he identified himself as Isaack. He pushed the door open and entered the house.
5. The accused then asked what his wife was doing at Christopher Kiptoo's house and before she could respond, the accused hit her on the left side of her ribs with a stick. The deceased screamed loudly while asking for assistance. Christopher left his house and went to sleep at his brother David Tallam's house which is about 70 meters away from the said scene of crime.
6. The reason Christopher Kiptoo Tallam's gave for failing to intervene was that he had an injury on the small finger of his right hand and he feared to add more injury to the finger and was also used to daily quarrels between the deceased and accused and he did not want to be party to it. The following day 29th March 2022 at about 06.00 hours, christopher found the deceased lying in his house floor with severe injuries on her body. He informed police that the deceased was able to talk and she informed him (Christopher) that she had been assaulted by her husband and then requested for water then requested to be taken home. Christopher assisted her to walk towards the road side but on arrival, she fell down and succumbed to injuries.
7. The deceased's cousin (Christopher) reported the incident to Maureen Komen who assisted him with the local chief's contact. The chief was informed of the incident and he called the police. Betty Sokomo Jematia, mother to Christopher confirmed hearing noise at 11.30 pm and confirmed that the accused person who was husband to the deceased assaulted her with a rungu as she pleaded with the deceased to stop beating her but her pleas were in vain. Betty decided to go back to sleep and the next morning, she learnt that the deceased had passed on.
8. The police visited the scene where they photographed deceased's body and removed to Eldama ravine hospital mortuary; the police also collected deceased's trouser soaked with blood stains about 100 meters away and kept exhibits. On the 1st of April 2022 post-mortem was conducted on the body of the deceased by Dr. Mengich who opined that cause of death was as a result of an acute head injury penetrating and with blunt resultant hematoma and brain edema with multiple soft tissue injuries. The police file was compiled and the accused herein charged with the offence of murder contrary to section 202 as read with 204 of the CPC now reduced to manslaughter.

Pre-sentence Report

9. The court called for a pre-sentence report to be filed before mitigation which was filed on the 26th February, 2024. From the report, the accused is 49 years old; there is no history of criminality within the accused's family. He did his Kenya Certificate of Primary Education (KCPE) in the year 1991 but did not proceed to a secondary school due to lack of interest and ignorance by his parents back then. The accused has been practicing mixed farming at the family land as well as doing casual labour within Sabatia Location up to the time of his arrest. He is married with four (4) children.



10. The accused person admits the charge. He states that the deceased who was his wife had on several instances abandoned him with the children due to alcoholism. He further added that the victim had a behavior of being unfaithful in their marriage which resulted to frequent conflicts between the two. He states that he was from a drinking spree and while on his way home, he heard his wife shouting from a neighbor's house and that is when he decided to go to the house to confirm what was going on. While at the neighbor's house, the neighbor went out of the house and left him with the victim; that the victim was holding a stick in her hand which he snatched from her and used it in assaulting her. That after the incident, he went to the house of the man's mother to inform that her son was having an affair with his wife. They found and decided to leave her. He went back to his house as he considered the action to take against her but when he went back the following day, he found his wife lying unconscious beside the road. He left her there and informed a shop attendant that he was going back to his house and if the authorities arrive, they will find him at his house. He was later called by the village elders. He honored their call and surrendered himself to the police who had arrived at the scene. He was arrested and later charged with the offence.
11. The accused prayed for court's leniency saying that he did not intend to kill his Wife but acted out of extreme anger. He regrets his action which he attributes to alcoholism. The victim's family stated that the death of their daughter devastated them. They said they had known the accused as a very responsible man who had been working very hard to support his young family which was depicted by the fact that at the time of commission of the offence, he had paid school fees for his son who was in high school for the whole year. After the demise of their mother, the children were taken by their maternal grandparents who have been taking care of the four children to date.
12. The victim's mother stated that the accused should be pardoned so that he can continue taking care of his young children. She further stated that the offender's family representatives have sought for forgiveness from their family and they had reconciliation meetings and they agreed to put the matter to rest; they agreed to forgive the accused and prayed he be placed on a non-custodial sentence as it will be in best interest of the children who are young and are need of parental love, care and protection.
13. The accused's mother and brothers regret the acts of the accused and blamed it on alcohol abuse. They confirmed that they have taken the initiative of reaching out to the victim's family through community elders who have apologized on behalf of the accused in accordance with the Kalenjin Culture. They urge this court to consider a non-custodial sentence so as to ensure the process of reconciliation and other cleansing rituals is completed.
14. The area administrators and the village elders stated that the accused has not been involved in any criminal acts within the community. They described him as a hardworking man within the community. They further stated that the accused and the victim occasionally abused alcohol which led occasional quarrels and attributed the incident to boiled up emotions. They stated that the family of the accused involved them in reconciliation and urged the court to be lenient while sentencing the accused.
15. From the probation officer's report, the accused is remorseful, he regrets his action and home environment is conducive for re-integration of the accused person.

Mitigation

16. The defence counsel Mr. Mwaita mitigated on behalf of the accused. He submitted that the convict is remorseful and seeks leniency from this Honourable court; that he regrets having used excessive force on his wife which eventually took away her life. That he is 49 years old with 4 children and upon the death of his wife, the children have been staying with the deceased's mother.



17. That he is a first offender and while in custody, the accused sent his family members to meet the deceased's family and they have agreed to forgive him. He submitted that they met again on the 29th November, 2022 and in the minutes endorsed by the area chief, they requested that the accused be released so that he takes care of the children. Counsel further submitted that the presentence report speaks positively about the accused; that home environment is conducive for re-integration of the accused. He prayed that the accused be considered for a non-custodial sentence and urged the court to also consider the period the accused has been in custody since he was arrested on 29th March, 2022.
18. On behalf of the state, Ms. Ratemo submitted that she has perused presentence report and minutes of the meeting by elders and leave the aspect of sentence to the discretion of the court.

Determination

19. Under section 205 of the *Penal Code*, a person convicted of Manslaughter is liable to imprisonment for life. In view of the fact that life sentence has been declared unconstitutional by the court of appeal, the court is at liberty to impose a lesser sentence considering circumstances of each case.
20. I take note of the fact that the convict herein is a first offender. I also take note of the fact that the family of the accused and deceased who were husband and wife respectively have reconciled under the Kalenjin culture and are agreeable to accused being placed on non-custodial sentence. Minutes availed to court confirm that the local administration were involved in the process of reconciliation and they are not also opposed to non-custodial sentence. The accused is also remorseful. He regrets his action and all parties interviewed by the probation officer attribute accused's action to overindulgence in alcohol. It is unfortunate that the offence resulted in loss of the deceased's life who left behind children with no one to take care of as she is gone while their further is in custody. The local administration confirmed that the accused had no criminal history and attribute the offence to alcohol abuse by both deceased and accused leading to quarrels which build up emotions resulting in the unfortunate incident. In view of the above, I am inclined to impose non-custodial sentence.

Final Orders: -

21.
 1. Accused to serve probation sentence for a period of 3 years.
 2. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 4TH DAY OF APRIL 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

CA Sitienei.

Mr. Mwaita counsel for the Accused.

Mr. Ratemo counsel for the state.

