



**Republic v Kipchumba & 5 others (Criminal Case E005 of 2023)
[2024] KEHC 5684 (KLR) (22 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 5684 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E005 OF 2023
RB NGETICH, J
MAY 22, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

MATHEW KENEI KIPCHUMBA 1ST ACCUSED

VINCENT YATICH YATOR 2ND ACCUSED

EVANS KIPKENEI KIMOSOP 3RD ACCUSED

BLAKWEN KIPSANG BISMARCK 4TH ACCUSED

ANDREW KIMOSOP KEITANY 5TH ACCUSED

SHANEEZ JEPKEMBOI SEGUTON 6TH ACCUSED

SENTENCE

1. The accused persons herein had been jointly 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 on the 26th day of March,2023 at Moloï village of Kipchomuso Sub-location in Baringo Central within Baringo County the accused persons jointly with others not before court murdered Bruce Kipruto Komen.
2. Upon the charge and its full particulars being read over and explained to the accused persons, they all denied and the matter was set down for hearing. However, when the matter came up for hearing on the 12th October,2024, the defence counsel Mr. Chebii for the 1st, 2nd, 3rd, 5th and 6th Accused persons informed the court that the accused persons and the deceased family are negotiating settlement in accordance with the Tugen traditions. Counsel informed the court that a cow had been given out to the deceased’s family and 12 cows valued at kshs 240,000 are remaining. He submitted that that the reasons for negotiations are that the accused and the deceased’s family are from the same clan, they are relatives and they live in the same location. Counsel sought time to pursue the negotiations and



formerly approach the state. Mr. Chebii's sentiments were echoed by Mr. Kipkulei who was holding brief for Mr. Chepkilot counsel for the 4th accused person. The court directed that the matter be mentioned on the 21st November, 2023 to confirm the position on plea bargain. On 11th April, 2024, plea agreement was duly executed and the murder charge reduced to manslaughter.

3. On the 23rd April, 2024, the charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code and its particulars were read over and explained to the accused persons who pleaded guilty and they were convicted on their own plea of guilty.

Brief Facts of the Case

4. On the 26th March 2023 a group who included deceased's relatives and neighbors raided the deceased's home in Moloï village of Orokwō Sub- Location but did not find him at home. At about 03.30Hours, the group accosted the deceased at the road near Three ways junction and savagely flogged him accusing him of being a habitual thief in the village. They assaulted him using wooden whips, wooden canes and Clubs from 03.30hrs to 09.00hrs. The deceased was assaulted alongside one Thomas Kerienye who hails from the same location.
5. The said Thomas Kerienye had been arrested earlier by the same group from his house on allegations that he had been selling illicit liquor in the village. Seven bottles of "Best" Whisky Liquor were recovered from his house. The group took Kerienye to Kabarnet Police Station at around 0645 hrs and handed him over to the officers who were manning the report and enquiries office. The officers Re-arrested Kerienye and booked him in custody vide OB. No. 07/26/3/2023 to be charged with the offence of selling illicit Liquor without Licence.
6. The group of people went back to Kanyika in Moloï and continued assaulting the deceased person. The deceased's Mother one Lydia Jemutai Kelyo was alerted by fellow villagers about her injured son who was still alive but very weak and lying helplessly on the roadside at Kanyika area. She rushed to the scene and met her son lying down on the grass with blood oozing from his mouth, nose and multiple parts of his body swollen.
7. The deceased's mother organized for transport and rushed the deceased to Baringo County Referral Hospital where he was admitted for treatment. While in the hospital bed receiving treatment, the deceased person regained consciousness and in the presence of the doctor on call, his mother Lydia Jemutai Kelyo and his elder brother Newton Kimosop Kelyo, he narrated what befell him together with Thomas Kerienye.
8. He mentioned some of the people who assaulted him being Mathew Kipchumba Kenei, Vincent Yatich Yator, Evans Kipkenei Kimosop, Bismark Kipsang alias "Sadam", Wilfred Yegon Kiprotich, Collins Kibor from Stanley family, Kaptuya Seguton, Jepkemboi Seguton and Andrew Kimosop; while trying to mention more people, the deceased suddenly developed sharp pains in his stomach and started begging for medication. His condition deteriorated even as a team of doctors tried to resuscitate him. At around 21.30hrs he passed on. His body was moved to the same hospital's mortuary.
9. On 29th March 2023 DCI officers investigating the matter visited Thomas Kerinye at Kabarnet GK prison where he had been convicted to serve 2 months imprisonment and he recorded his statement. The police had also earlier on visited and processed the two scenes of crime in Moloï and Kanyika areas. Several Exhibits listed were recovered from the scene and preserved.
10. The investigative team later visited Moloï village and managed to arrest all the accused persons herein. They were jointly charged with the offence of Murder. Several other prime suspects who were mentioned by witnesses and by the deceased person in his dying declaration fled and are still at large.



11. On 4th day of April, 2023 postmortem was conducted on the body of the deceased, Bruce Kipruto Komen by Dr. Wangari Wambugu after being identified by Lawrence Kimutai Sirma and Derrick Kemboi Kiprop. The doctor formed the opinion that the cause of death was as a result of acute head injury with generalized soft tissue injuries due to blunt force trauma consistent with whipping/flogging. The police file was compiled and the accused charged with the offence of murder now reduced to manslaughter upon request for plea bargain.
12. The families of the accused persons held 4 reconciliatory meetings on 4th of November, 2023, 6th January, 2024, 12th February, 2024 and 2nd April, 2024.
13. The court called for a pre-sentence report to be filed before mitigation which was filed on the 18th April, 2024.

Presentence Reports

(a) 1st Accused's Pre-sentence Report

14. From the report, the 1st accused is aged 30 years old. He had formal education up to form 4 and scored D+. He is married with one child aged 3 years and has been of good character. He does not use alcohol and he is a family man. The sister interviewed prayed for the offender to be granted non-custodial sentence since he is the only brother and he is the only one taking care of home since the parents are all deceased. The wife said the 1st accused has a young family and prayed for him be admitted into community rehabilitation. His guardian stated that the offender's behavior was due to peer pressure and committed to facilitate his community rehabilitation. He prayed for non-custodial sentence. At the community level, the offender does masonry work as his main source of income. He is of good health and does not use alcohol or any other drugs.
15. The offender regrets his actions and prays for forgiveness from the victim's family and from the court. He prays for non-custodial sentence so that he can continue with his family responsibility since he is the bread winner to his young family.

2nd Accused's Presentence Report

16. From the report, the 2nd accused is aged 31 years old and had formal education up to form 4 and obtained D+. After form 4, he started doing casual jobs in the village. She is married with 2 children. The offender's parents indicated that their son has been of good character before the incident and he might have committed the offence due to peer pressure and group influence. He confirmed that as a family they fully participated in the reconciliation and compensation process that took place. He is a first offender; he is of good health and does not use any alcohol or drugs.
17. The offender prays for non-custodial sentence so that he can continue to take care of his family. He indicated that at the moment he is relating very well with the victim's family. The probation officer is of the view that the offender is suitable for community rehabilitation however this is subject to court discretions.

3rd Accused's Pre-sentence Report

18. From the report, the 3rd accused is aged 25 years old and had formal education up to form 4 in the year 2015 and obtained skill in Plant Operation from Kilimambongo Institute in the year 2020. He is single and currently works as a driver and does not use any alcohol or drugs and is of good health. The



offender's father indicated that the offender has been of good character all through. He attributes peer pressure to the offence and is willing to facilitate his rehabilitation within the community.

19. The offender indicates that he is a first-time offender and he has already reconciled with the victim's family. He prays for forgiveness from the court and prays for non-custodial sentence so that he can restart his life afresh. He promises to adhere by any conditions granted imposed against him. His father prayed for the offender to be admitted into non-custodial sentence and he is willing to facilitate his rehabilitation and supervision within the community.

4th Accused's Pre-sentence Report

20. From the report, the 4th accused is aged 26 years old and had formal education up to form 4 and obtained mean grade of D+. The father indicated that the 4th accused has been of good character and he does not use alcohol and he is married with two children. He operates motor cycle taxi. His father indicated that the offender is sickly as he has blood pressure and is diabetic. He prayed for non-custodial sentence and stated that he is willing to facilitate his community rehabilitation and supervision. He confirmed that they have compensated the victim's family and currently they are living in peace.
21. The 4th accused prays for non-custodial sentence so that he can take care of ailing father who is diabetic and has high blood pressure and to continue with his parental responsibility to his young family since the wife is still in college.

5th Accused's Pre-sentence Report

22. From the report, the 5th accused is aged 38 years old and he sat for KCSE in the year 2003. He is married with 2 children and is currently working as a driver of a lorry transporting fuel to various towns. The father's sentiments are that the 5th accused has been of good character and attributed the offence to peer pressure. The father added that the deceased is their relative and as a family, they fully participated in the reconciliation and compensation to the deceased's family. The 5th accused's father and sister prayed for non-custodial sentence so that the 5th accused can continue with his parental responsibilities and they are willing to facilitate his community rehabilitation.
23. The 5th accused stated that he is a first-time offender; he prays for forgiveness from the victim's family and the court. The victim's family and the local administration did not oppose the offender being rehabilitated within the community noting that they have already reconciled and compensated the family.

6th Accused's Pre-sentence Report

24. From the report, the 6th accused is aged 24 years old. She did her KCSE in the year 2018 and obtained mean grade of D+. She is currently a second-year student at Baringo Technical Institute pursuing a certificate course in Catering and accommodation with support from CDF and community fundraising. The 6th accused's sister stated that she was on her way to school when she met the deceased and co-accused persons on the road and stood at the scene for a while. She was found at the scene and arrested. The sister stated that the 6th accused has been of good character and prayed for her being given community rehabilitation so that she can continue with her education at Baringo Technical college and she is willing to facilitate her rehabilitation within the community.
25. The 6th accused regrets her actions and asks for forgiveness from the victim's family and from the court. She prays for non-custodial sentence so that she can continue with her education. She promises to adhere by all the conditions of the non-custodial sentence.



26. From the presentence report, the secondary victims who were the deceased parent's, family of the victim gave similar sentiments in respect to all the accused persons . They indicated that the deceased was aged 19 years and he had just done KCSE awaiting to join college. Before his demise the deceased was doing casual jobs within the community. The mother indicated that his son used to sell second generation alcohol. They all stated that they had a discussion for a period of four months over reconciliation and compensation and they have already reconciled with the accused persons together with their families. They confirmed that they have received a total of twelve cows being compensation as per Tugen traditions. They also indicated that they are related with the accused persons and they prefer non- custodial sentence indicating that it is best for their own security in that if custodial sentence is imposed, they will live in fear within the community.
27. The local administration also gave similar sentiments in respect to all accused persons. He confirmed that all the accused persons are well known to them; that all are first offenders and have been of good character prior to the offence herein. He confirmed that he was the chair of the reconciliation and compensation meetings and that the deceased/victim and the offender are relatives and are not opposed the accused persons being admitted to non- custodial sentence since the accused persons and victim's family have reconciled. The administrator indicated that the victim was a troublesome youth within the community and he was offered lots of ADR meetings without change.
28. Community sentiments is that there had been rise in alcohol consumption and manufacturing within the community and they decided to do a swoop during the night on particular homestead that manufacture alcohol; and as they were doing that, they met the deceased on the road going home. Out of anger the offenders started beating him mercilessly. The victim was later taken to hospital and after some days he succumbed to the injuries.

Mitigation

29. The defence counsel Mr. Chebii mitigated on behalf of all the accused persons, he stated that the death of the deceased was unfortunate and it was not intentional. Counsel stated that on the fateful date, the accused among other youths in the village had decided to flash out illegal liquor brewers and substance within the village. He stated that they had gone to several homes and while going home, they met the deceased who was an illegal brewer and habitual thief and mob justice was meted against him.
30. Counsel submitted that at 4 p.m., they took the deceased to Kabarnet police station together with the other persons who had liquor to be charged with offence of stealing. He submitted that the police refused to take the deceased into the cell and only took in one with illicit brew and gave reason that the deceased was an habitual wrong doer and had been taken to court severally and they were asked to take the deceased back to the village and that is how he was taken back and he was beaten.
31. Counsel submitted that all the accused persons are remorseful and are first offenders and sought court's leniency. He submitted that all accused persons are below 30 years save for accused 5 who is 39 years old. He submitted that the accused persons are praying for non-custodial sentence and the deceased was their relative and they have reconciled and paid Kshs.480,000/= to the family of the deceased which is equivalent to 12 cows as required under the Tugen culture.
32. The prosecution counsel Ms. Ratemo submitted that she had perused the pre-sentence report and is aware of the reconciliation talks between the families and submitted that she leaves the aspect of sentence to the court.



Determination

33. Under section 205 of the [Penal Code](#) a person convicted of Manslaughter is liable to imprisonment for life. However, the court has discretion to impose any other lenient sentence depending on circumstances of each case.
34. I have considered sentiments by the local administration, community and victim's family. They all confirm that the accused persons are related to victim's family and they have had 4 reconciliatory meetings and they agreed to reconcile and paid kshs 480,000 being value of 12 cows required for death compensation under Tugen customs which all the parties herein subscribe to.
35. I have also considered mitigation by the accused persons through their Advocate Mr.chebii. He submitted that all accused persons are remorseful for causing the death of the deceased herein. The incident was instigated by outcry resulting from rise in sale of illicit brew within the community .The family of the victim confirmed that the deceased was involved in second generation alcohol. The local administrator's sentiments also were that victim was a troublesome youth within the community and he was offered lots of ADR meetings without change, the offence occurred out of community outburst. However, despite the deceased's record or character, the accused were not justified to take the law in their own hands and take out the deceased's life. Life is sacred however wrong the person is. There can never be justification to kill and that is why the Kenyan constitution protects the right to life.
36. However in view of sentiments given by both families, the local administration and the community who urged this court to impose non-custodial sentence, and considering the circumstances surrounding commission of the offence herein and sentiments by victim's family, local administration and community as captured above; and considering the need for peaceful coexistence of the families affected within the community, I am inclined to impose a non-custodial sentence of 3 year probation sentence in respect to each accused person.
37. Final Orders: -
 1. Each accused to serve 3 years' probation sentence
 2. Right of appeal 14 days

JUDGMENT DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 22ND DAY OF MAY 2024

RACHEL NGETICH

JUDGE

In the presence of:-

Karanja/Sitienei – Court Assistants.

Ms.Ratemo for state

Mr.Chebii counsel for 1st,2nd,3rd,5th and 6th Accused persons

