



**Republic v Nkuruna (Criminal Case E007 of 2022)
[2024] KEHC 4860 (KLR) (13 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 4860 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CRIMINAL CASE E007 OF 2022**

**F GIKONYO, J
MAY 13, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSEPH ATETI NKURUNA ACCUSED

SENTENCE

Sentence

1. The accused was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. Upon a Plea Bargain Agreement being entered, the charge was then reduced to manslaughter;
3. The Plea Bargain Agreement was filed in court on 03/11/2023 and accepted by the court on 22/11/2023 upon it being satisfied that, it has factual and legal basis, 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;
4. The charge was of unlawfully killing Moses Kirantu Naimuny on 23/04/2022 at Topoti Trading Centre in Narok North Sub-county within Narok County.
5. The accused was convicted on his own plea of 'Guilty' to the offence of Manslaughter c/s to Section 202 as read with Section 205 of the Penal Code.

Brief facts

6. The brief facts are that on 23/04/2022 the deceased arrived at Laleyo bar around 2100 hours. The deceased was immediately followed by the accused and the two seemed to have issues between themselves. They kept arguing and at around 2300 hours the deceased drew a sword and threatened the



accused. Both the bar attendant and her husband heard the accused threatening to kill the deceased. This prompted the husband of the bar attendant to request the two to leave the bar. They later heard the deceased calling out for help from outside the bar. They found him lying down on the corridor bleeding profusely from his thigh and the accused had fled the scene.

7. The deceased succumbed to the injuries at the scene and his body was ferried to Narok County referral hospital. A post-mortem was conducted on 26/04/2022 (P Exh 1.). It was established that the cause of death was a result of hemorrhage secondary to a stab wound.
8. A presentence report was filed on 26/02/2024. According to the report, the victim's family and the family of the accused are not willing to do any reconciliation. The area administration thinks the accused is a danger to the community. The probation officer has not recommended a probation sentence.

The prosecution's pre-sentence submissions.

9. The prosecution urged this court to sentence the accused person to a custodial sentence for deterrence, rehabilitation, and denunciation purposes considering the nature of the offence and the circumstances under which the offence was committed. The prosecution relied on the 2016 judiciary of Kenya sentencing policy guidelines at page 15 paragraph 4.1 and *Dahir Hussein V Republic* Criminal Appeal No. 1 of 2015; [2015] eKLR.
10. The prosecution urged this court to consider the views of the victims which are well captured in the presentence report. The victims strongly oppose leniency on the sentence to be meted out to the accused person herein. The prosecution relied on Section 329(c) of the Criminal Procedure Code, and Francis Karioko Muruatetu & Another Vs Republic.
11. In mitigation, the accused submitted that he is first offender despite insinuations of negative conduct attributed to him which was not supported by any evidence. He urged further that the offence occurred in self-defense, and the weapon used belonged to the deceased. He stated that he might have been drunk when the incident occurred. And, that he readily entered a plea of guilt to the charge. He beseeched the court to afford him an opportunity for rehabilitation.
12. He cited the case of *R vs. John Nganga Gacheru* [2016], *Abmed Mohammed & 5 others vs. R* [2014] eKLR, *R vs. Isaac Wanjala Murumba* [2021] eKLR, *SA case of Sangweni vs. State* (AR221/09).

Analysis And Determination

13. Appropriate sentence depends on the facts and circumstances of the case. This court will consider the circumstances of the case including, the personal circumstances of the accused, the manner of the commission of the offence, the views and concerns of the victims, the objective of punishment and the relevant law applicable.
14. The applicable penalty law for the offence of manslaughter is Section 205 of the Penal Code which state that;

'Any person who commits the felony of manslaughter is liable to imprisonment for life'
15. Under the said section, a person convicted of manslaughter, may be convicted up to the maximum sentence of life imprisonment. The sentence is indicative of the seriousness of the offence which is an aggravating factor.
16. From the report by the probation officer, the victim's family and the family of the accused are not willing to do any reconciliation, and the area administration thinks the accused is a danger to the community. The probation officer has not recommended a probation sentence.



17. Further aggravating circumstances in the case include the fact that the convict used a deadly weapon namely a dagger in committing the offence.
18. But, the facts reveal that the killing was not premeditated; the accused had arrived at a drinking joint where he and the deceased were engaged in an altercation; the deceased drew a sword and threatened the accused. The accused threatened to kill the deceased. The two were requested to leave the premises. They did. But, immediately thereafter, the workers at the bar heard the deceased calling for help. It appears the confrontation continued and the deceased was stabbed by the accused as a result of which he died.
19. Other mitigating factors which the court considers are that, the accused readily pleaded guilty and thus saved on judicial time; expressed remorse; is deemed to be a first offender; the killing was not pre-meditated; and is in his forty-of the proverbial, 'life begins at 40'.
20. Although the report by the probation officer alludes to some negative attributes of the conduct of the accused, there was no evidence to support the claims.
21. In light of the fact that, this is a serious offence, and the need for deterrence, this court finds that a non-custodial sentence would not be appropriate in the circumstances. The court sentences him to ten (10) years imprisonment; a sentence which will deter such reckless taking away of a life, but, yet, giving him an opportunity to be re-integrated back into the society. Because the sentence is lenient, the purport of section 333(2) of the CPC has been considered. The sentence shall commence from the date of conviction.
22. Such of cases which occur during drinking spree or moments, raises great concern on management of emotional intelligence, outbursts and anger in society. In traditional African society, alcohol was brewed and consumed for a purpose, and was not intended to inebriate but to bless and to appreciate the goodness and blessings of God. Quite re-engineering is required here.
23. In the upshot;
 - i. The accused is sentenced to a term of ten (10) years imprisonment for Manslaughter; to commence from the date of conviction.
 - ii. R/A explained.
24. Orders Accordingly

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 13TH DAY OF MAY, 2024.

F. GIKONYO M.

JUDGE

In the presence of: -

Ms. Rakama for DPP

Korir for accused

Accused

Otolo C/A

