



**Republic v Chebon (Criminal Case E001 of 2024)
[2024] KEHC 4778 (KLR) (9 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 4778 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E001 OF 2024**

RB NGETICH, J

MAY 9, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

TONNY KIPTOO CHEBON ACCUSED

SENTENCE

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 25th day of December, 2023 at SACH 4 village of Kabarnet Location in Baringo Central Sub- County within Baringo County, murdered Neville Okoth Odongo.
2. The charge and its full particulars were read over to the accused who denied the charge and the matter was set down for hearing. However, when the matter came up for hearing on the 7th March, 2024, the court was informed that the victim’s family have been compensated and they will not be proceeding for hearing and the defence therefore requested for plea bargaining to have the charge reduced to a lesser charge of manslaughter. In response the prosecution counsel confirmed that she had received the minutes of reconciliatory meetings and confirmed that the family of the victim and the accused were in court and compensation had been done. The court directed that the matter be mentioned on the 11th March,2024 to confirm progress on plea-bargaining.
3. On the 11th March,2024 plea agreement was duly executed reducing the charge to manslaughter following. On 11th March, 2024, the charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code and its full particulars were read over and explained to the accused who pleaded guilty and was convicted on his own plea of guilty.



Brief Facts of The Case

4. On the night of 24th December, 2023, and 25th December, 2023, the deceased called one Martin Kosgei at around 10:00 p.m and made plans to meet and go to church together. A short while later, the deceased arrived at Kabarnet Town in company of another where he met Martin and the three of them went to church together, attended the service and left church at around 0100Hours. Martin was then called by one sister Telsy Korir who informed him that she was at Kaprogonya Area in a group and asked him to join them.
5. Martin and the deceased left for Kaprogonya leaving the friend that the deceased had come with behind and on reaching Sach 4 village, Kaprogonya Area, the deceased and Martin met the group at a field and began greeting the group of people and as Martin was greeting the group, the deceased and the accused began an argument; the reason for the argument was not clear and the people close only heard the deceased questioning the accused, who he was and where he hails from during the argument. The accused seemed agitated and responded what the deceased would do and why the deceased wanted to know before taking a knife from his waist and stab the deceased.
6. The deceased called out Martin and told him he had been stabbed before he fell down. The group at the scene tried to prevent the accused from fleeing the scene. Martin pushed the motor cycle that the accused had already boarded. The motor cycle fell, Martin got hold of the keys of the motor cycle and in the process, he was injured by the same knife used to stab the deceased. The accused chased Martin for a while but Martin managed to get away with the keys of the motor cycle. The accused then dropped the knife and ran towards the river but the crowd caught up with him and took him back to the scene. The deceased was rushed to Baringo County referral Hospital but was pronounced dead on arrival.
7. Police were the notified and they rushed to the scene where they found the accused and arrested him on the same night. The scene was processed and the accused arraigned in court on the 27th of December,2023 where custodial orders were issued for 10 days to complete investigations. The accused was interrogated on the 29th December,2023 where he admitted to killing the deceased upon provocation by the deceased.
8. On 4th day of January,2024, postmortem was conducted on the body of the deceased by Dr. Barmogon after being identified by Elvis Ochieng and Frankline Ayieko. The doctor concluded that the cause of death was as a result of acute chest injury secondary to stab wound. The police file was compiled and the accused was 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 9th April, 2024. From the report, the accused's parents of the accused separated, his late mother moved to Kaprogonya where she bought land, built her house and also a few rental rooms while the father of the offender stayed in Ngolong area. The father of the accused has been described as being a drunkard and irresponsible. When the mother of the accused passed on in 2021, the accused stayed at his mother's house with his siblings.
10. The accused had formal education up to form 4. He sat for his K.C.S.E in 2023 at Kabarnet High school and scored a mean grade of B- and after completing his high school education, he started doing farming in their land and working as a boda boda rider to provide for his needs.



11. The offender understands the seriousness of the offence and the charges he is facing before court. He admits the offence and is aware of the reconciliation and compensation that has been done but he still regrets his actions. He prays for forgiveness from the court and from the victim's family. He prayed to be sentenced to serve a non-custodial sentence so that he can be able to continue with his education.
12. The Assistant Chief from where the accused hails indicated that they have no problem with the accused serving a non-custodial sentence indicating that the accused is a young man who has a bright future especially considering he attained good grades that qualify him to join a university. He indicated that they were aware of the reconciliation done between the family of the accused and the family of the victim and they fully support it. He is not opposed to a non-custodial sentence as it will enable the accused to pursue higher education and provide for his family in future. They attributed the offence to idleness and negative peers but believe that considering the offender's history he stands a chance of being rehabilitated within the community as there is no animosity towards him and the community at large is ready to welcome him back.
13. The brother and sister of the accused prayed for on custodial sentence on behalf of their brother indicating that he was still young and had a chance to pursue university education. The uncle of the accused on his part stated that he was the one who was acting as the accused's parent since his mother is deceased and his father is irresponsible. He stated that he took the initiative of contacting the family of the victim and the two families met and agreed on compensation and as per their agreement, he had already paid most of what they agreed upon and the balance will be paid by June, 2024. He prayed that the accused be sentenced to serve a non-custodial sentence the family of the victim had forgiven the offender after successful reconciliation and compensation.
14. The father, mother and two brothers of the victim indicated that indeed they met with the uncle and two siblings of the offender and reconciliation was done. That after the discussion, the two families settled at 10 cows as compensation. The family of the offender confirms that so far the family of the offender has already given out 8 cows and they agreed to give them upto the 30th of June, 2024 to give the last 2 cows. The family of the victim therefore indicated that as a result of the reconciliation and compensation, they have fully forgiven the accused and considering he is a young man they do not oppose him being sentenced to serve a non-custodial sentence and be given a chance to rebuild his life within the community.
15. From the probation officer's report, the accused is first time youthful offender who has a chance to join the university after scoring a B- in KCSE in 2023 and in his view, he is suitable for a non-custodial sentence and proposes a probation sentence for a period of 3 years during the period he will be taken through guidance and counselling on conflict resolution and will follow up to ensure he continues with his education as his uncle is willing to pay his university fees. This is subject to the discretion of this Honourable court.

Mitigation

16. The defence counsel Mr. Kipkulei mitigated on behalf of the accused. He submitted that that the accused is remorseful and asks for forgiveness from the court and that he has sought forgiveness from the deceased's family and the two families have reconciled. That the victim's family have forgiven the accused and they have been compensated with 10 cows. The victim's family confirmed that they were compensated. Counsel submitted that the accused is a young man aged 21 years; that he completed high school and wishes to join university this year. He further submitted that for the period the accused has been in custody, he has learnt a lot. He concluded that the accused did not have malice aforethought



to commit the offence which occurred out of anger after a disagreement with the accused and prayed for a non-custodial sentence so that the accused can continue with his education.

Determination

17. Under section 205 of the [Penal Code](#) a person convicted of Manslaughter is liable to imprisonment for life. However, a lesser sentence may be imposed depending on circumstances of each case.
18. From mitigation through his counsel, the accused is remorseful of the offence. He is a young man aged 21 years old and from the social inquiry report he attained Mean Grade B- in KCSE and prays to be placed on non-custodial sentence so that he can join university. From the report, the victim's family and accused's family have reconciled and cultural rites have been performed and the deceased's family have been compensated with 8 cows and the remaining 2 to be paid later. He submitted that the two families are now living harmoniously.
19. In view of the fact that the accused's family have taken reconciliatory steps and the two families are now living peacefully and taking into consideration the fact that both families wish to have the accused released so as to enable him pursue his studies, I find it appropriate to impose non-custodial sentence
20. Final Orders:
 1. Accused to serve 3 years' probation sentence.
 2. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET

THIS 9TH DAY OF MAY 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

Elvis/Momanyi – Court Assistant.

Accused present.

Mr. Kiptoo holding brief for Mr. Kipkulei for Accused.

