



Republic v Chumo (Criminal Case 55 of 2023) [2024] KEHC 4768 (KLR) (9 May 2024) (Sentence)

Neutral citation: [2024] KEHC 4768 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 55 OF 2023**

RB NGETICH, J

MAY 9, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

ELIKANA KIPSANG CHUMO ACCUSED

SENTENCE

1. The accused Elikana Kipsang Chumowas 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 1st day of November, 2019, at Kamasaba village, Koibatek Sub- County within Baringo County murdered Augustine Kibet Ng’etich.
2. The charge was read and its full particulars were read over and explained to the accused who denied and the matter was set down for hearing. However, when the matter came up for hearing on 17th July, 2023, the defence counsel Mr. Chebii informed the court that they are pursuing plea bargain. Plea agreement was executed on 29th February,2024 to have the charge reduced to manslaughter.
3. On the 1st March, 2024, the charge of manslaughter and its full particulars were read over and explained to the accused who pleaded guilty and upon admitting particulars of the charge, he was convicted on his own plea of guilty.

Brief Facts of the Offence

4. On the night of 31st October,2019 and 1st of November, 2019 the accused, the deceased, the deceased’s uncle by one Julius Kemboi among others were at the home of one franco drinking changaa at around 9:00 p.m. The accused drinking at the kitchen while the deceased was sited next to his uncle Julius Kemboi. The deceased paid for his uncle 2 cups of changaa and at around 1:00 p.m. the deceased and his uncle decided to leave the home and headed to Edwin’s home to drink more alcohol leaving the



- accused at Franco's home. When they arrived at Edwin's compound they found people already asleep and they proceeded to the home of one Sylvia Chemutai.
5. On reaching Sylvia chemutai's home, the deceased knocked at Sylvia's door and Sylvia opened the door while appearing sleepy. They asked her whether she had changaa and Sylvia gave them one cup each. They sat and drunk for about one hour then they left at around 1:00 a.m. That the deceased was using his torch to light the way to their home and while on the way, the accused herein appeared and picked a fight with the deceased while claiming that the deceased owed him some money.
 6. In the process of the fight, the accused removed his pen knife and used it to stab the deceased on his stomach. The accused then removed the knife and left the deceased bleeding with intestines out. The deceased screamed in pain as he sat down. Julius ran out to neighbours to request for help. A crowd gathered and helped rush the deceased to Eldama Ravine Hospital where upon arrival, the deceased was pronounced dead. A report was made at Eldama Ravine police station on the same night at around 4:30 a.m. The police then headed out to the accused person's house where they found the accused sleeping and they arrested him. The police recovered a blood-stained pen knife under the accused person's bed which was kept as an exhibit.
 7. The scene was visited and processed where the police also drew a sketch plan documenting from the first point where the deceased and accused were drinking together to the point where the deceased was killed. The accused gave his statement under inquiry on the 1st November, 2019 where he admitted killing the deceased after a drinking spree. On the 1st November, 2019 Post mortem was conducted on the body of the deceased at Eldama Ravine district Hospital by Dr. Rotich Mercy upon identification by Timothy and Milly Ngetich. The doctor concluded that the cause of the death was due to intestinal perforation.
 8. 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 upon request for plea bargain.

Pre-sentence Report

9. The court called for a pre-sentence report to be filed before mitigation which was filed on the 17th April, 2024. From the report, the accused person was born in the year 1965 at Sinonin village. He completed Secondary education and was employed as untrained teacher at Boito Primary school in the year 1988 to 1990 and from the year 1990 to 1992, he worked as a casual worker at Pyrethrum Board of Kenya in Molo and later moved to Eldama Ravine where he was employed at Langas Cooperative society as a casual laborer for a period of two years. He then in farming until the time of arrest. The accused is married and blessed with 9 children.
10. The accused person admits the charge, he prays to the court for leniency stating that he did not intend to kill his friend/neighbor but he acted out of furious anger and he regrets his actions which he attributes to his state of being drunk.
11. The victim's family stated that the death of their son devastated them. They said they had known accused as a very responsible man who has been working very hard to support his family. This was depicted by the fact that at the time of commission of the offence, his children were at school and at the moment, others are working as civil servants. The victim's father is agreeable to accused being granted non-custodial sentence so that he can continue taking care of his young children and confirmed that the accused's family representatives have sought for forgiveness from their family and they have reconciled; that the accused family have paid the victim's family a total of 9 cows as per the Kalenjin tradition and a cleansing ceremony was undertaken on the 28th day of March, 2024. Further that an agreement to put



the matter to rest was entered and a conclusion to forgive the accused was made. The victim's family are now pleading with the Honourable court to pardon the accused.

12. The area administrators and the village elders confirmed that the accused has not been involved in any criminal acts within the community, that he is a hardworking man within his community and added that the accused and the victim were friends/ neighbors who often accompany each other to drinking dens. The administrators said they involved in reconciliation. They attributed the incident to intoxication on alcohol and urged this convenient to impose a lenient sentence. From the probation officer's report, home environment is conducive for re-integration of the accused person.

Mitigation

13. The defence counsel Mr. Chebii mitigated on behalf of the accused. He submitted that the accused is remorseful for causing the death of the deceased which was unfortunate incident; and that it occurred at the drinking spree where they quarreled and fought and, in the process, inflicted injury on the deceased. He submitted that the accused is a first offender and prayed for leniency. Counsel further submitted that the accused is the bread winner to his family. He confirmed that the two families have met and agreed to settle this matter culturally and 9 cows have been paid and the matter has been settled under Kalenjin Customary laws; and the two families are receptive and agreeable to non-custodial sentence. Counsel further submitted that there is no grudge between the two families and they do pray for a non-custodial sentence and for the time spent by accused in custody be considered. Counsel concluded by submitting that the accused is a humble person save for that unfortunate incident.
14. The prosecution counsel Ms. Ratemo, submitted that she has gone through the pre-sentence report and she is aware of the reconciliation talks between the families and that she was given a copy of the minutes from the meeting they held. She submitted that the family have met three times and there is a letter from the chief Lembus confirming that the family of the deceased was compensated; and left the aspect of sentence to the discretion of the court.

Determination

15. Under section 205 of the *Penal Code* a person convicted of Manslaughter is liable to imprisonment for life. The court has discretion to impose a lesser sentence depending on circumstances of each case.
16. I have considered sentiments by family of the victim, accused's family and local administration. They all confirm that they have had reconciliatory meetings and agreed that the accused's family compensate the deceased's family with 9 cows as per Kalenjin culture. The local administration confirm reconciliation by the two families and indicated that they were involved in reconciliation process. This was also confirmed by the prosecution counsel who confirmed that she was served with minutes of reconciliation meetings. She left the issue of sentencing to the discretion of the court.
17. From mitigation through defence counsel, the accused is remorseful and the incident occurred as a result of conflict that arose while the accused and deceased were drinking together. The accused regrets his unplanned action which caused the death of the deceased. Both families and the local administration urges this court to impose non-custodial sentence. In view of the above I find that non-custodial sentence is appropriate and proceed to impose probation sentence for a period of 3 years
18. Final orders: -
 1. Accused placed on probation for a period of 3 years.
 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 Assistants.

Ms. Ratemo for State.

Accused present.

Mr. Chebii for accused.

