



Republic v Ebei (Criminal Case E015 of 2021) [2024] KEHC 4825 (KLR) (9 May 2024) (Ruling)

Neutral citation: [2024] KEHC 4825 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL CASE E015 OF 2021
RN NYAKUNDI, J
MAY 9, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

PATRICK ESINYEN EBEI ACCUSED

RULING

1. The accused person was initially charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. Upon entering a plea bargain agreement, the charge was reduced to manslaughter. The plea bargain was adopted by the court after being satisfied that the accused person understood its contents and voluntarily executed it.
2. The accused was charged with the offence of murder having unlawfully murdered Lorot David Ekai on 8th November, 2021 at Kalokol in Turkana Central Sub-County. 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*.
3. During the hearing, the accused person was at all times represented by Learned counsel Mr. Ebenyo while Mr. Kakoi was prosecuting counsel for the state. In Mr. Ebenyo’s view, the accused person is a great candidate for a non-custodial sentence for reasons that he is a young person of 21 years old. That the accused has the capacity and time to build his life once more and make better decisions for the benefit of his future. He also deserves to go back to school and pursue further education.
4. Counsel further submitted that the accused person has been in custody for four years and such a period should be considered as sufficient sentence served. It was counsel’s position that the accused person has expressed remorse for his actions and regretful for the life lost, sorry for the family of the deceased for losing their loved one and urged the court to consider a non-custodial sentence.
5. On record is a pre-sentence report filed on 27th February, 2024. According to the report, the accused person and the victim were quarreling over the issue of going back for fishing again which the accused



person was not happy about. It escalated into a fight and the victim was stabbed. He was rushed to hospital and on arrival he was pronounced dead. The report indicated that there is no restitution or reconciliation done after the incident and this is because neither of the families know each other.

Decision

6. The right to protection of the law or due process includes the right to a fair trial under Article 50 of the [constitution](#) on sentencing matters. Having said so I do not believe that the fair trial process of an accused person stops at the conviction at the conclusion of the trial or on an unequivocal plea of guilty. Sentencing is one of the solemn duty of a trial judge. It is during sentencing that the court is at liberty to hear submissions that impact on sentencing. This necessarily means that the principle of a fair trial must be accorded to the parties at the sentence stage as one of the corner stones of a just and democratic society which forms the rule of law of this country. The court has to take into account the nature of the offence the evidence and circumstances of the case in order to arrive at an appropriate sentence. This is clearly the task I am being asked to discharge in the instant case.
7. The punishment prescribed for the offence of manslaughter is a maximum of life imprisonment under section 205 of the [penal code](#). The maximum sentence is however appropriate in serious cases and more often in cases where a dangerous weapon has been used. The prosecution urged the court in the plea bargain agreement to consider a custodial sentence of not more than 15 years and not less than 10 years. The defence on the other hand proposed a maximum sentence of 5 years.
8. In [V M K v Republic](#) [2015] eKLR, 10 years imprisonment was imposed for manslaughter. As I have highlighted, courts are inclined to impose life imprisonment where a deadly weapon was used in committing the offence. The courts are gradually moving away from mandatory sentences and more weight is being given to mitigation and circumstances of the case.
9. In determining the appropriate sentence, the Judiciary [sentencing policy guidelines](#) are instructive. They are not elaborate as to sentences involving manslaughter, but they give a roadmap which courts ought to consider in coming up with an appropriate sentence.
10. The sentencing objectives in Kenya have been captured in the Sentencing guidelines 2023 to be the following: -
 - a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - e. Community protection: to protect the community by incapacitating the offender.
 - f. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - h. Reintegration: To facilitate the re-entry of the offender into the society.



11. Additionally, in the “Muruatetu Case”, the Supreme Court outlined the following guidelines as being applicable when the Court was giving consideration to re-sentencing;

- “(a) age of the offender;
- (b) being a first offender;
- (c) whether the offender pleaded guilty;
- (d) character and record of the offender;
- (e) commission of the offence in response to gender-based violence;
- (f) remorsefulness of the offender;
- (g) the possibility of reform and social re-adaptation of the offender;
- (h) any other factor that the Court considers relevant.”

12. The facts of the present case reveal an accused person who appears to have had anger issues. The fight leading to the victim’s death ensued after quarreling over the issue of going back to fish again which the accused person was not happy about.

13. In *V M K v Republic* [2015] eKLR ten years in jail was given for manslaughter. I have considered the sentencing objectives in totality. The accused person is a young man with a whole life ahead of him and there is need to have him rehabilitated to enable him manage anger issues. The supreme court in the “Muruatetu” case urges courts to consider the age of the accused person as a factor in sentencing. It is the reality of a criminal justice system that the perpetrators crime of murder are not equally morally blameworthy to pass a uniform sentence. The respective peculiar circumstances are of significance to achieve the core-principle of fundamental justice. The scales of justice should not be removed from the arms of the trial court to exercise discretion taking into account individual factors. All aspects put into consideration; I find it appropriate to sentence the accused person/convict to 12 years imprisonment. The period shall run from the date of his arrest in the spirit of Section 333(2) of the [Criminal Procedure Code](#). 14 days Right of Appeal.

14. Orders accordingly.

DATED AND SIGNED AT LODWAR THIS 9TH DAY OF MAY, 2024.

In the Presence of

Mr. Yusuf for the State

Accused.

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R. NYAKUNDI

JUDGE

