



**Republic v Kibowen (Criminal Case E009 of 2020)  
[2024] KEHC 5072 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5072 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE E009 OF 2020**

**RB NGETICH, J**

**MAY 9, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**KIPKURUI KIBOWEN ..... ACCUSED**

**RULING**

1. The accused person was 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 17<sup>th</sup> day of June, 2019 at Sesia village, Ewalel Location in Baringo Central Sub- County within Baringo County murdered one Christopher Boswony Chesire.
2. The charge was read over and explained to the accused who denied the charge and the matter proceeded for trial. However, when the matter came up for hearing on the 11<sup>th</sup> July, 2023, the defence counsel Mr. Kipkulei submitted that although the matter was coming up for hearing, they have sent a request for plea bargaining to the prosecution to consider. The prosecution counsel Ms. Ratemo confirmed that they had received request for plea bargaining from accused in prison and requested for a mention date to confirm the progress. The court directed that the matter be mentioned on the 19<sup>th</sup> September, 2023 to confirm the plea-bargaining progress. On the 14<sup>th</sup> February, 2024 plea agreement was duly executed to reduce the charge to manslaughter. Thereafter on the same day, the charge and its particulars were read over and explained to the accused. He pleaded guilty to the charge of manslaughter contrary section 202 as read with section 205 of the Penal Code and was convicted on his own plea of guilty.

**Brief Facts of the Case**

3. On 17<sup>th</sup> day of June, 2019 at around 1900 Hours, the deceased, the accused and the accused's brother one Kiplagat Kibowen and Victor Kendagor were heading home from work. The deceased and the accused were walking a few meters ahead of Kiplagat Kibowen and Victor Kendagor all of a sudden,



- the accused and the deceased picked a quarrel with Christopher questioning the accused why he had taken his work tool (chisel) and broken it. The accused was infuriated and decided to pick up a stone and hit the deceased's head with the stone with it on the head and continued to kick him.
4. Kiplagat Kibowen and Victor quickly intervened and tried to separate them. The deceased sustained injuries on the back of his head with blood oozing and sustained a bruise on the left side below the eye. That upon realizing that he had seriously injured the deceased, the accused fled from the scene. Kiplagat Kibowen and Victor assisted the deceased and rushed him to Baringo County Referral Hospital where he was admitted in critical condition. Three days later the condition of the deceased deteriorated and on the 20<sup>th</sup> of June, 2019, the deceased passed on. On the 21<sup>st</sup> of June, 2019, the matter was reported at Kabarnet Police station where police officers began investigations. On visiting the scene, they found blood stained stone and kept as an exhibit.
  5. The postmortem was conducted on the body of the deceased at Baringo County Referral Hospital on the 1<sup>st</sup> of July, 2019 by Dr. Mukasa who formed the opinion that the cause of death was small gut volvulus following blunt abdominal trauma with associated esophageal tear and mild head injury.
  6. The accused was arrested and booked at Mogotio police station before being escorted to Kabarnet Police station on the 19<sup>th</sup> of October, 2020. The police file was compiled and the accused charged with the offence of murder contrary to section 202 as read with 204 of the [CPC](#) now reduced to manslaughter.

### **Pre-Sentence Report**

7. The court called for a pre-sentence report to be filed before mitigation and was filed on the 4<sup>th</sup> April, 2024. The report indicates that the accused's family has no history of criminality apart from the accused. The accused has 7 siblings and 3 other step siblings. The report indicates that the family support and relations is very low and their father is always a drunkard.
8. From the report, the accused's parents stated that the accused when provoked is unable to control his anger and can act badly. They urged this court to impose non-custodial sentence on ground that the accused has been in remand from the year 2019 and non-custodial sentence will allow him to start his life afresh. His father stated that he will surrender one-acre piece of land as a way of reconciling and compensating the victim's family as he does not have 9 cows commonly paid as compensation.
9. The accused did his KCPE in the year 2016 and scored 320 out of 500 Marks. He did not proceed with his education due to low economic power at the family level and his own will. In the year 2017 to 2019, he did casual jobs within the community including boda boda business and quarry activities. In the year 2018, he went to Mogotio and stayed with his cousin where he assisted him in preparing and selling of rock cakes and has been in custody June, 2019.
10. The deceased's uncle confirmed that they have reconciled with the accused's family after holding two meetings. They apologized to victim's family and as per Tugen culture, the accused's family are required to compensate them by either giving them a certain number of cows or land and they have agreed give the victim's family land and were to go to the land on 6<sup>th</sup> April 2024. He confirmed that as a family, they have forgiven the accused and they are not opposed to the accused being granted community rehabilitation as they do not hold any grudge against the offender.
11. The accused said he has been in custody since the year 2019 and prays for non-custodial sentence so that he can re-start his life afresh as well as assist his mother who is currently working as a baby sitter within Kabartonjo area.



12. The village elder together with the local administration confirmed that the accused is well known to them and that he had challenge of excessive alcohol consumption. They confirmed that the two families were able to meet and have reconciled and the accused's family have set aside a piece of land as compensation. Both of them participated in the meetings where the local administrator was the chair. They are not opposed the accused being granted community-based rehabilitation as the two families do not have any enemy. The local administration is willing to facilitate his supervision and re-integration and will ensure that cleansing take place and that he settles on another piece of land as planned by his father.
13. The probation officer's view is that the offender is suitable for community rehabilitation subject to courts discretion.

### **Mitigation**

14. The defence counsel Mr. Kipkulei mitigated on his behalf, he stated that the accused is remorseful for causing the death of his friend Christopher Boswony Chesire on 17<sup>th</sup> June,2019. He submitted that the accused prays for leniency during sentencing. That he regrets the offence and has learnt a lot in custody after arrest. He has undergone theological courses and obtained 5 certificates and is now a saved man.
15. Counsel submits that at the time of commission of the offence, the accused was 17 years old and he prays to be given a second chance so that he can go back to start a family. That the two families have reconciled; that the accused is the 6<sup>th</sup> born in a family of 8 siblings, his parents are aging and his wish is to go back and assist them. That the death was occasioned accidentally, out of anger and he hit the deceased at the heat of passion fatally injuring the deceased. He prayed for a non-custodial sentence.
16. The prosecution counsel Ms. Ratemo submitted that shas gone through the pre-sentence report with reconciliatory minutes attached indicating that the family of the accused and the deceased had a meeting on 23<sup>rd</sup> March,2024 and have agreed to compensate and left the aspect of sentence to the discretion of the court.

### **Determination**

17. 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.
18. I have considered the fact that the accused is remorseful and regret causing the death of his friend. He attributes the act to anger upon being provoked. His parents indicated that the accused has challenges controlling anger when provoked. I however take note of the fact that the accused has been in remand since 2019 a period of about 5 years now. The certificates the accused has produced indicate that he has undergone through biblical teaching which in my view has played a role in enabling the accused exercise self-control or anger management.
19. I also take note of the fact that accused's family and victim's family have reconciled. This has been confirmed by the local administration who said they were involved in reconciliatory process and the victim's family have forgiven accused; and they confirm that the accused's family are compensating the victim's family with land. The accused's family, victim's family and local administration are not opposed to noncustodial sentence. There is also evidence that all parties do not oppose the offender being given non-custodial sentence. In view of the above, I am inclined to impose non-custodial sentence.



**Final Orders:-**

20.

1. Accused to serve 3 years probation sentence.
2. Right of appeal 14 days.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 9<sup>TH</sup> DAY OF MAY 2024.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Elvis/Momanyi – Court Assistants.

Ms. Ratemo for State.

Mr. Kipkulei for Accused.

Accused present.

