



**Republic v Komolinyang (Criminal Case E015 of 2023)
[2024] KEHC 5109 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5109 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL CASE E015 OF 2023
RN NYAKUNDI, J
MAY 9, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

NANOK EKAALEI KOMOLINYANG ACCUSED

RULING

1. Nanok Ekaalei Komolinyang was 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 Ekusi Pireon 11th July, 2023 at Lonyuduk area in Turkana West-Sub County within Turkana 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. The prosecuting counsel at all times was Mr. Kakoi while the accused person was represented by learned Counsel Mr. Ebenyo. Counsel argued that the prosecution's proposal for a non-custodial sentence should be adopted. That according to the plea agreement, the two families involved have since reconciled. It was pointed out that the accused person is 60 years of age and given his advanced age, he is a perfect fit for a non-custodial sentence. Further, it was submitted that the accused person has been in custody for more than one year and the court was urged to consider the same as sufficient sentence served.
4. It was counsel's position that the court should consider the circumstances of the offence, particularly because the accused person was merely protecting himself and his livestock from potential cattle



rustlers when the offence occurred. That his actions are that of an innocent citizen who was acting in fear with no iota of malicious intent to cause harm.

5. On the prosecution's side, counsel argued that the offence of manslaughter is a serious one and a human life has been lost through an illegal way. Counsel submitted that the accused has tried to mitigate the loss he caused by compensating the family of the victim with 99 goats, 5 heads of cattle with 2 calves and 2 donkeys. He urged the court to consider a lenient sentence.

Decision

6. Sentencing is a very important aspect of the criminal justice system which resolves around the balancing of the interest of the society and the accused. The sentencing for any offence has a social goal. The fundamental purpose of imposition of sentence is based on the principle that the accused must realize that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric. The purpose of just punishment is designed so that it serves as a deterrent for the individual and the society should not also suffer from the commission of crime time and again.
7. Under Section 205 of the *Penal code*, the offence of manslaughter is punishable with life imprisonment. 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 non-custodial sentence, which proposal has been well received by the defence.
8. In determining whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -
 - a) Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanor.
 - b) Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.
 - c) Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
 - d) Protection of the community: - where the offender is likely to pose a threat to the community.
 - e) Offender's responsibility to third parties: - where there are people depending on the offender.
9. I have considered the offence in question and the aggravating factors. The sentencing objectives in Kenya have been captured in the Sentencing guidelines 2023 to be the following: -
 - i. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - ii. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - iii. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - iv. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - v. Community protection: to protect the community by incapacitating the offender.
 - vi. Denunciation: to communicate the community's condemnation of the criminal conduct.



- vii. Reconciliation: To mend the relationship between the offender, the victim and the community.
 - viii. Reintegration: To facilitate the re-entry of the offender into the society.
10. In the matter of sentencing particularly on the serious offences under Section 202 & 203 of the Penal Code though there is wide discretion conferred by the law and sentencing policy, various factors must be considered in arriving at a fair and just verdict. The sentence must speak to the public policy of punishing crime and for the offender taking personal responsibility and accountability. The personality of the offender or for that matter convict as revealed by his age, character, and other circumstances likely to influence rehabilitation, the nature of the offence and the manner in which it was committed is of great importance when it comes to sentencing. It also must be kept in mind that the right to life in Article 26 of the Constitution is protected and guaranteed to every citizen and other persons within our borders. It is the duty of every Kenyan to defend this right unless there are circumstances which are permissible in law to justify infringement or violation of this right by any other person against another. In the case before me I have weighed all factors may it be aggravating or mitigation non is compelling or substantial for this accused/convict to benefit from a non-custodial sentence. Turning to circumstances of the case on the basis of my appreciation of the law, the accused/convict shall serve a sentence of 4 years imprisonment that the period shall incorporate the provisions of Section 333(2) of the CPC on credit period to cater for pre-trial detention pending the hearing and determination of this case. 14 days Right of Appeal.

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

.....

R. NYAKUNDI

JUDGE

In the Presence of:

Mr. Yusuf for the State

Accused

