



Republic v Lopeeny (Criminal Case 8 of 2019) [2024] KEHC 5075 (KLR) (7 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5075 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL CASE 8 OF 2019
AK NDUNG’U, J
MAY 7, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

LOBUIN APOO LOPEENY ACCUSED

RULING

1. Lobuin Apoo Lopeeny had been charged with an offence of murder contrary to Section 203 and 204 of the *Penal Code*, but the charge was eventually reduced to manslaughter following a plea bargain agreement. The court entered a plea of guilty to the said charge of manslaughter on the accuser’s own plea of guilt after the court accepted the plea agreement pursuant to Section 137H of the *Criminal Procedure Code*. This was after the court was satisfied of the factual basis of the plea agreement and that the accused was competent, of sound mind, and had acted voluntarily in accordance with Section 137G of the *Criminal Procedure Code* at the time of the agreement.

2. In terms of Section 202 as read with Section 205 of the *Penal Code* the accused, upon being convicted, is subject to serve life imprisonment.

3. On the part of the prosecution at the sentence hearing, Ms Kariuki informed the court that there were no past criminal records of the accused.

Mr. Mathea, counsel for the accused stated that the accused was remorseful. That the deceased was the accused’s friend. He added that the accused regretted his action and he has been in custody since 2019. That he is a first offender and has a solid family background.

4. Counsel added that having looked at the pre-sentence report, he notes that the victim’s family has not yet healed. He states that the accused is ready to commence reconciliation with the family. They are neighbours at home and the accused seeks an opportunity to apologize to the family. Counsels prays for leniency under the *Probation Act*. A non-custodial sentence is sought. It is urged that this is majorly to promote reconciliation.



5. Counsel further draws from the pre-sentence report and observes that the accused has a brother who works as a prison officer at Naivasha Maximum prison who has offered to live with the accused at Naivasha.
6. It is urged that the accused has saved the court's time and resources by entering a plea bargain and the court is urged to consider this.
7. From the pre-sentence inquiry report, it emerges that, much as a positive view of the Accused is discernable from the family and community, there is a fear running in the Accused's family that due to animosity between the 2 families, the victim's family could harm the accused.
8. Under Section 205 of the Penal Code, manslaughter is punishable by a maximum sentence of life in prison. This is, however, the maximum penalty that is normally reserved for the most serious of such situations. This does not, in my opinion, fall into the category of the most heinous examples of manslaughter. The state has stated that the accused is a first-time offender. As a result, I've ruled out life imprisonment.
9. Case law would be the starting point in determining a custodial sentence for manslaughter offenses because the Judiciary Sentencing Policy Guidelines are silent on the path to take in manslaughter instances. In V M K v Republic [2015] eKLR ten years in jail was given for manslaughter.
10. The convict herein pleaded guilty and where a judge takes a plea of guilty into account, it is important that the convict says he or she has done so as noted in the case of R v. Fearon [1996] 2 Cr. App. In this case therefore I have taken into account the fact that the convict readily pleaded guilty, as one of the factors mitigating his sentence. Further, the English practice of a reduction of one third has been held to be an appropriate discount as held in the case of R v. Buffrey (1993) 14 Cr App R (S) 511 where the Court of Appeal in England indicated that while there was no absolute rule as to what the discount should be, as general guidance the court believed that something of the order of one-third would be an appropriate discount.
11. In light of the convict's plea of guilty, and persuaded by the English practice, because the convict before me pleaded guilty, I propose at this point to exclude the sentence of life imprisonment
12. I have considered the fact that the convict is a first offender, a relatively young man at the age of 27 years. He is a first offender and remorseful. He pleaded guilty thus saving the court time and resources and acceptance of wrong doing is no doubt a strong indicator of remorse. I find a sentence of 13. (Twelve) years imprisonment appropriate in the circumstances of this case.
14. In accordance with Section 333(2) of the Criminal Procedure Code, the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. It is noted that the accused has been in custody for 5 years.
15. In view of the foregoing, the accused is hereby ordered to serve a sentence of 7 (Seven) years imprisonment. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY MAY, 2024.

A.K. NDUNG'U

JUDGE

