



**Republic v Biwott (Criminal Case 61 of 2017) [2024] KEHC 6646 (KLR) (7 June 2024) (Sentence)**

Neutral citation: [2024] KEHC 6646 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL CASE 61 OF 2017**

**JRA WANANDA, J**

**JUNE 7, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**NICHOLAS KIPROTICH BIWOTT' ..... ACCUSED**

**SENTENCE**

1. The Accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars were that on 3/11/2017 at Koisagat Village in Ng'eny Division, within Uasin Gishu County, he unlawfully killed one Gilbert Cheruiyot.
2. He was first arraigned before the Deputy Registrar of this Court on 13/11/2017 and later took plea on 20/12/2017 before Githua J when he pleaded not guilty. He was on 14/05/2019 admitted to bail. After several adjournments, the parties informed the Court that they were engaged in plea-bargain negotiations and for this reason, hearing of the case was deferred on several occasions to give them time to finalize such negotiations. Eventually, on 18/04/2023, the plea bargain agreement was presented to the Court and the same indicated that the Accused had agreed to plead guilty to the lesser charge of manslaughter. The matter thereafter proceeded to plea bargain hearing. The proceedings were conducted in Kiswahili which is the language that the Accused claimed to understand.
3. The Accused, who was represented by Ms Okara Advocate, was then sworn. Upon examination under Section 137F of the *Criminal Procedure Act*, he stated that he voluntarily and without any coercion, executed the plea-bargaining agreement dated 15/03/2023 and that he fully understood the effect thereof. He thus confirmed that the signing was confirmation of his consent to the agreement.
4. Upon satisfying myself that the provisions of Sections 137E - 137G of the *Criminal Procedure Act* had been observed and complied with, including by the Court, I directed that the Accused take a fresh plea which he did for the charge of manslaughter. He then pleaded guilty to this charge. The facts of the



- case were read out to him and which he admitted as being correct and true. Accordingly, this Court then confirmed the plea of guilty and convicted the Accused for the offence of manslaughter.
5. The facts of the case are that on 3/11/2017, the Accused and the deceased were at a circumcision ceremony at a nearby homestead drinking alcohol together. The Accused gave the deceased a cup of busaa and they continued refreshing themselves. After a short while, the Accused tried to use force to obtain the cup back from the deceased upon which the two engaged in a bit of struggle but were restrained by members of the public. They were then ordered to leave the ceremony. The deceased was the first to leave and the Accused followed shortly thereafter. While on their own way, the Accused who was a pillion passenger on a motorcycle, saw the deceased walking home on foot, followed the deceased and hit him on the head using a rungu and ran away. A good Samaritan took the deceased to his home where the deceased spent the night only to be found dead in the morning. The body was taken to Moi Teaching & Referral Hospital mortuary for preservation. The Accused was arrested the following day by the area Assistant Chief and was handed over to the Ziwa Police Post where he was re-arrested and placed in custody. On 8/11/2017, the post-mortem was conducted and the cause of death was established to be raised intracranial pressure due to epidural haemorrhage due to blunt force trauma to the head. On 13/11/2017, the Accused was charged with the offence of murder which the State now substituted to that of manslaughter. The post-mortem Report was produced in evidence as an exhibit.
  6. As aforesaid, the above facts were read out to the Accused and he again expressly admitted and confirmed all as true and correct
  7. In her address, Ms. Okok, Senior Prosecution Counsel, submitted that the Prosecution had no previous criminal records on the Accused and that he could therefore be treated as a first offender. Regarding the sentence, she observed that the Accused and the deceased were neighbours and there was no bad blood between them prior to the incident. She added that they had met with the family of the deceased particularly one Joel Rutha, an elder brother of the deceased and one Bilha Cheruiyot who is the widow of the deceased and who both confirmed that the two families had since reconciled, that the family of the Accused has paid 9 cows to family of the deceased as compensation and the matter has been forgiven. She submitted further that the deceased left behind one 6-year-old son who is being taken care of by his mother and grandmother, that a human life had been lost and the Court has a duty to send out a message that it is not proper to take a life at will, and that the offence of manslaughter attracts a maximum sentence of life imprisonment. She urged that looking at the circumstances and considering the views of the family of the deceased, she proposes a sentence of 5 years imprisonment to be computed from the date of conviction.
  8. On her part, Mr. Okara, Counsel for the Accused, submitted that the Accused is remorseful, that he is a young man of 34 years with a young family which entirely depends on him, that he spent 3 years in custody before being released on bond, that he undertakes not to repeat the offence, and that he is a first offender. He urged the Court to consider admitting the Accused to probation to enable him take care of his family since the families have reconciled.
  9. Upon inquiry by the Court, Ms Okok confirmed that the Accused had indeed spent 3 years in custody before being released on bond but submitted that in asking for a 5 years sentence custodial sentence, she had already taken into account of the time spent.
  10. Pursuant to directions of this Court, the Pre-Sentence Report dated 8/10/2023 and prepared by the Probation Department was presented.



11. The applicable law on sentence for the offence of manslaughter is Section 205 of the *Penal Code* which provides as follows:

“ Any person who commits the felony of manslaughter is liable to imprisonment for life”
12. In considering the mitigating factors, I have taken into account the manner in which the offence was committed, namely, that the Accused and the deceased were friends and neighbours and were out drinking together. A petty insignificant altercation arose between them perhaps due to their state of being inebriated. The rungu blow inflicted by the Accused and which killed the deceased was also only one and not repeated blows which could have pointed to a malicious intent on the part of the Accused. It is clear that the Accused never imagined that death would ensue.
13. I have also taken into account the contents of the Pre-Sentence Report which regarding the sentiments of the victim’s family, confirms that the Accused and the deceased were friends and neighbours, that the Accused was married with a child but the wife reportedly left immediately after the incident, that according to the brother of the deceased, the family of the Accused approached them for reconciliation rites as per the Kalenjin community culture upon which they held discussions and the matter was amicably settled and they have since put the incident behind them and are now living in peace with the Accused and members of his family. The Report also states that the Accused has been out on bond since 2020 and there has been peaceful co-existence and the family of the deceased has no objection to the offender being granted a non-custodial sentence. The Report also states that the community members stated that their relationship with that of the Accused is good and that the local administration also confirmed that the two families have reconciled and there are neither feelings of anger/bitterness nor security fears over retaliation on the Accused and that they too had no objection to the Accused being granted a non-custodial sentence. In its recommendations, the Report proposed that the Accused be placed on probation for 3 years.
14. I have also taken into account the fact that the Accused was a first offender. He also entered into plea-bargain and pleaded guilty thus saving much judicial time.
15. I have also taken into account the age of the accused and his desire that he ought to be allowed to get back into the society to rebuild his life. The Pre-sentence Report states that the Accused was born in 1992 which means that he is now aged about 32 years, a relatively young age. I have also considered that the Accused, before admitted to bail, had been in custody since his arrest on or about 4/11/2017, one day after the incident, until he was admitted to bond on 14/05/2019, and was subsequently released upon compliance with the terms given.
16. I have however also taken into account the aggravating circumstances. For instance, I note that the assault on the deceased was totally unwarranted. After their fight had already been stopped by the intervention of their colleagues and after the deceased had already left, there was totally no need for the Accused to have carried over the matter outside. While a pillion passenger on a motor-cycle, upon spotting the deceased walking along the road, the Accused jumped off the motor-cycle and attacked the deceased by hitting him on the head with a rungu. The Accused unnecessarily overreacted. It is also not clear why the Accused was walking around armed with a rungu in the first place. Every human being is born with the inherent ability to control his emotions and temper and to act wisely and in restraint in any situation, no matter how dire it may be. It cannot be the case that the only recourse that a person aggrieved or provoked by the act of another, has is to use violence on that other. That is law of the jungle and cannot be accepted in a civilized society such as ours. All human beings must always learn to maintain self-control, moderate their temper and exercise anger management. One cannot simply,



out of anger, take the life of another and simply go scot-free. A precious human life was needlessly lost and the Court must reiterate the message that it is not acceptable to take a human life.

17. Having considered all the above factors, including both Counsels' submissions and also the objects of sentencing as set out in the Judiciary Sentencing Guidelines and also in the case of Muruatetu (*supra*), I am of the view that considering the circumstances arising herein, particularly the fact that the two families have long already reconciled and the family of the Accused already paid out compensation under the Kalenjin community culture, a non-custodial sentence would be appropriate.

### **Final Orders**

18. Having considered all the relevant principles and circumstances, I rule as follows:
- i. The Accused is sentenced to Probation for a period of 3 (three) years. In reaching this verdict, I have taken into account the proviso to Section 333(2) of the Criminal Procedure Act which obligates the Court to "take into account" the period spent in custody in remand by a convict before sentencing.
  - ii. During the period of probation, the Uasin Gishu County Probation Office shall guide, counsel and shape the Accused person's attitude towards conflict resolution, anger management and address any other need(s) that may arise in the course of implementing his rehabilitation plan.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 7<sup>TH</sup> DAY OF JUNE 2024**

.....

**WANANDA J.R. ANURO**

**JUDGE**

Delivered in the Presence of:

Mr. Mugun for State

Accused Person

