



**Republic v Bungei (Criminal Case E032 of 2021)
[2024] KEHC 6503 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6503 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E032 OF 2021
RN NYAKUNDI, J
JUNE 6, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

EZRA KIMELI BUNGEI ACCUSED

RULING

Representation:-

Mr Mark Mugun for the State

1. Ezra Kimeli Bungei was charged with the offence of murder contrary to section 203 and 204 of the *Penal Code*. The charge was reduced to manslaughter pursuant to a plea bargain agreement that was made on 13th May, 2024 and filed on the same date. A plea of guilty was entered by the court on the said charge of manslaughter after the court accepted the plea bargain agreement in line with the provisions of sections 137A-O of the *Criminal Procedure Code*. The court was equally satisfied with factual matrix and the accused’s competence to voluntarily enter into such an agreement.
2. The accused person was represented by learned Counsel Mr. Oyaro while Mr. Mugun appeared for the prosecution. On record, I have a plea bargain agreement where the prosecution proposed a term of fifteen (15) years less the time spent in custody whereas the defendant suggested a sentence of Five years imprisonment.
3. I have also on record a pre-sentence report which is important in shading some light on the personal circumstances of the accused person. It is reported that the accused person before the court is 26 years old and from Kapsundeï village, Ainapkoï Sub County within Uasin Gishu County. He is the 6th born in a family of eight, he is not married and shares the same compound with his parents who are farmers. He admits unlawfully causing the death of on Gilbert Kipsang Rop after they fought while under the influence of Alcohol. He is a class seven dropout due to what he claims as lack of interest after



- undergoing the Kalenjin Traditional Circumcision ceremony and he has been doing odd jobs within his locality. That he is well aware of the seriousness of the offence and its implications, he is remorseful and prays for the court's leniency because he had no intention of killing the deceased. He purports that they were both drunk.
4. According to his family, they are ready to receive him if given a chance to serve a non-custodial sentence, the family have already initiated reconciliation process by delivering one black cow as a sign of seeking forgiveness from the deceased family. On the other hand, the local administration has no objection to a non-custodial sentence provided the accused's family continues with the reconciliation process. With this background, the probation officer recommended that the accused person be sentenced to a non-custodial sentence of three years based on the fact that he has admitted the offence and has shown a great deal of remorsefulness.
 5. Counsel for the accused person filed submissions on mitigation dated 22nd May, 2024 where he urged the court to consider the following mitigations;
 - i. The accused person is a young man with immense capabilities and if released, he is likely to contribute largely to the society.
 - ii. The accused person has been in custody for over four (4) years, he has learnt his lesson, he has reformed and undertakes never to be involved in criminal activities again.
 - iii. The accused is immensely remorseful, and if given a chance he will strive to make amends with the family of the victim.
 - iv. The accused person is a first-time offender with no previous criminal records.
 - v. The impugned incident arose out of an altercation between the deceased and the accused person while the accused was not in his right state of mind.
 - vi. By pleading guilty the accused has demonstrated good faith, and he has saved on judicial time.
 6. In view of the said mitigating circumstances, learned counsel urged the court to consider a sentence of five years and that the period that he has been in remand be taken into consideration.

Determination

7. The offence of manslaughter is punishable by a maximum sentence of life imprisonment under section 205 of the [penal code](#). The sentence is however reserved for serious cases. In the Plea bargain agreement, the prosecution proposed a sentence of 15 years less the time spent in custody.
8. The appropriate sentence can only be achieved when this court considers the objectives of sentencing in totality and the guideline laid out in the "[Muruatetu case](#)". 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.
9. 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.
10. Additionally, in the "*Muruatetu Case 1*", 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.”
11. The factual basis resulting to the offence in question is that on the 26th day of March, 2021 at around 1700hrs, the accused went to Tachasis pub to refresh himself. While he was having a drink, the deceased walked into the pub while appearing to be under the influence of alcohol. A fight broke out between the deceased and the accused, which fight was interfered by the other patrons in the pub. The two were separated and each went their way; the deceased took his motorcycle and rode to his cousin's home. While the deceased was chatting with his cousin the accused came to the homestead and they began to have a verbal altercation once more. It was at this point that the accused drew a hammer that he had concealed in his clothes and used it to hit the deceased several times to the head. The deceased's cousin managed to grab hold of the accused and took the hammer away from him. The deceased was then immediately rushed to Plateau Hospital where he was treated and referred to Moi Teaching & Referral Hospital for further treatment. He succumbed to the injuries on 27th March, 2021. A post mortem conducted on 31st March 2021 revealed the cause of death to be due to severe blunt head trauma consistent with assault.
12. In homicide cases the supreme court in the *Muruatetu v Republic* 1 2017 eKLR laid down the guidelines on sentencing to influence the discretion of the trial court in arriving at a fair and just sentence. The factors guide that in determining appropriate sentences, appropriate weight must be given to each factor more so any aggravating circumstances responsive to the accused's level of blameworthiness. It is expected of the trial court to keep a fine balance between them and it must endeavor or underemphasize of any of the factors in determining the applicable sentence. I form the opinion that the Plea bargain agreement should count to something but the aggravating factors should equally be given due regard so that in the end, the objectives of sentencing are achieved in totality. This is case where the accused person had an altercation at a local pub, to which they were safely separated



and everyone went his way. It then follows that the accused person with a clear intention to harm the deceased went to his homestead with a hidden hammer, which was used as murder weapon. It is clearly a case where the accused person used violence against the deceased who was safe at his cousin's homestead. On the face of it there are no compelling or substantial circumstances which could have triggered the use of excessive force on the part of the accused person as against the deceased. The right to life under Art 26 of the Constitution is protected and guaranteed that each citizen shall enjoy the fullness of that right without limitation from another human being. The gravity of the type of crime and the manner in which it was committed is an aggravating factor which cannot be ignored by this court when exercising its discretion in passing a sentence against the accused.

13. Having carefully analyzed the facts attendant to the instant case and in considering the objectives of sentencing in totality and considering that the accused person has pleaded guilty thus saving on judicial time, these factors will all count on imposing a lesser sentence.
14. It is a case where, as opposed to acting within a spur of a moment, the accused had enough time to cool and reconsider his wrongful act after they were separated and everyone went his way. Having considered all the issues above, the accused is sentenced to 12 years imprisonment with a credit period of the time spent in pre-trial detention pending trial, pursuant to the provisions of section 333(2) of the Criminal Procedure Code. This is in line with the principles in the case of Rwabugande Moses v Uganda (2017) UGSC 8 the supreme court of Uganda profoundly held as follows on a constitutional provision with similar provisions with our section 333(2) of the CPC as follows:

“What is material in that decision is that spent in lawful custody prior to the trial and sentencing of the convict must be taken into account and according to the case of Rwabugande that remand period should be credited to a convict when he is sentenced to a term of imprisonment. This court used the words to deduct and in an arithmetical way as a guide for the sentencing courts but those metaphors are not derived from the constitution. Where a sentencing court has already demonstrated that it has taken into account the period spent on remand to the credit of the convict the sentence would not be interfered with by the appellate court only because the sentencing judge or justice used different words in the judgment or missed to state that they deducted the period spent on remand. These may be issues of style for which a lower court would not be faulted when in effect the court has complied with the constitutional obligation in Article 23(8) of the Constitution.”

15. In this respect, the Deputy Registrar of the High Court shall generate a committal warrant incorporating a credit period of three years and one month in compliance with section 333(2) of the Criminal Procedure Code.
16. Thus, to kill a human or even curse one is an affront to and an attack upon God. Genesis 9:6 sees murder as so heinous a crime that by it one forfeits his own life. For you Ezra, you have heard that it was said to those of old you shall not murder and whoever murders shall be liable to judgment.
17. Orders accordingly.

DATED AND SIGNED AT ELDORET THIS 6TH DAY OF JUNE, 2024

R. NYAKUNDI

JUDGE

