



Republic v Keter (Criminal Case E067 of 2017) [2024] KEHC 6504 (KLR) (6 June 2024) (Ruling)

Neutral citation: [2024] KEHC 6504 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E067 OF 2017
RN NYAKUNDI, J
JUNE 6, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

ELIUD KIPKEMBOI KETER ACCUSED

RULING

1. The accused person faces a charge of murder contrary to section 203 and 204 of the *Penal Code*, but the charge was reduced to manslaughter pursuant to a plea bargain agreement made on 24th January, 2024. A plea of guilty was entered by the court on the said charge of manslaughter after the court confirmed that the plea bargain agreement was in line with the provisions of section 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 prosecution was represented by Learned Counsel Mr. Mugun while Mr. Nyachiro learned counsel, represented the accused person.
3. On the part of Mr. Nyachiro, he advanced his arguments for the reduction of sentence based on the following mitigatory factors: the accused’s previous conduct, the accused’s great degree of provocation, the accused’s remorsefulness, accused’s current family responsibilities, accused’s restitution, accused’s assimilation with family, the accused is a first offender and the period served by the accused in pre-trial custody.
4. 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. The accused person on his part suggested a maximum of 5 years imprisonment.
5. The appropriate sentence can only be achieved when this court considers the objectives of sentencing in totality and the guidelines laid out in the “Muruatetu case”.



6. 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.
7. Additionally, in the "*Muruatetu Case*", the Supreme Court outlined the following guidelines as being applicable when the Court was giving consideration to 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-adaption of the offender;
 - (h) any other factor that the Court considers relevant.”
8. The facts leading to the offence in question are that on the 21st day of November, 2017 at around 09:00pm, the deceased, Eldad Kiprotich Biwott paid a visit to Caroline Rose Adeke, the wife of the accused. He was ushered into the house and they shared a meal together with Mercy Oduya, a neighbor, and started chatting till around 11:00 p.m. when Mercy Oduya stepped out to look for a spot-light. She bumped into the accused person who was on his way to the house. He inquired about his wife and Mercy informed him that she was at home. When the accused got inside the house, he found the deceased and his wife still engaging in a conversation. The accused got enraged that there was another man in his house and demanded answers from him. In the process, he whipped out a knife which he used to stab the deceased two times on the back. The deceased managed to dash out of the house and went to a nearby petrol station seeking for help while screaming. A petrol station attendant found the accused holding the deceased by the shirt with one hand and on the other, holding a knife. The attendant pleaded with him to let go of the deceased, which he eventually did saying that he is going to look for the wife to kill her. As he left, the deceased breathed his last. The area chief was informed



of the incident, then in turn informed the police who visited the scene. The accused was arrested and the body of the deceased escorted to the morgue at Moi teaching & Referral Hospital.

9. In *V M K v Republic* [2015] eKLR ten years in jail was given for manslaughter. The trend has been that when the accused person uses a dangerous weapon in committing the crime, the court is likely to sentence the accused to life imprisonment. In the present circumstances, the accused person who appeared to be in a mission to grievously harm the deceased person as revealed from the autopsy report. The report captures the following injuries:
 - i. Stab wounds on the back measuring 4x2 and 3x15.
 - ii. Stab on the intercostal space
 - iii. Massive hemothorax 4th vertebrae and right lung collapse.
10. As a result of the examination, the doctor formed an opinion that the cause of death was severe hemorrhage stab wound.
11. This murder arose as a result of our humanity and jealous of a man against another for reason and suspicion that the deceased was up to something sinister when he visited the convict's homestead without his knowledge. As to what extent that suspicion went, the outcome of it was premature termination of the right to life of the deceased. Sometimes I wonder whether the effects of Adam and Eve's sin propelled the convict to be provoked and commit the heinous crime of homicide as against the deceased. It is instructive to note that the elements of provocation as known in law under section 207 and 208 of the *Penal Code* needless to say if ever it is the one which invoked anger to compel the convict to act in the manner he did, the threshold set by the law had not been met. The following acts may subject to the provisions contained in section 207 and 208 of the *Penal Code* to amount to provocation:
 - i. An assault of such a nature as to inflict actual bodily harm or great insult is a provocation to the person assaulted.
 - ii. If two persons quarrel and fight upon equal terms and upon the spot whether with deadly weapons or otherwise each gives provocation to the other whichever is right in the quarrel and whichever strikes the first blow can be a trigger for the defence of provocation.
 - iii. The sight of the act of adultery committed with one's wife is provocation to the husband of the adulteress and on the part of both the adulterer and the adulteress.
 - iv. The law does not envisage words or gestures or injuries to property or breaches of contract to amount to provocation within these provisions.
 - v. At the time of admitting this plea agreement, none of the above test provided for was within the conduct of the convict to cause or induce the death of the deceased.
12. In this case, my appreciation of the law and facts, I find no sufficient evidence on provocation most favorable to the convict for a reasonable man to form the view that by seeing the deceased in his house he was so provoked to the degree to lose self-control and unlawfully cause the death of the deceased.
13. I have considered the sentencing objectives in totality. From the pre-sentence report dated 25th November, 2020, it is contended that between the accused family and that of the victim attempts were made to promote victim-offender mediation. The first stage in this matter is diagnosing the relative severity of the offence. The second stage is to investigate the existence of mitigating factors for the court



to find a reason to be lenient. It is worth reiterating that the accused regrets committing the offence. He is remorseful and undertakes responsibility of causing the death of the deceased.

14. The accused had been in remand for three years before he was released on bail on 19th October, 2020. Pursuant to the provisions of section 333(2) of the *Criminal Procedure Code*, the court is under an obligation to consider the time spent by the accused person in pre-trial detention pending trial and conclusion of his/her case. I am conscious of the said period and the same has been factored in the final sentence. The principles ordained on this guideline are as laid down in the case of *Rwabugande Moses v Uganda* [2017] UGSC 8 where 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. All persons are presumed innocent until proven guilty in accordance with Art 50(2)(a). Therefore, guilt cannot be presumed before the prosecution proves a charge beyond reasonable doubt and this principle applies until the judgment is made final by a court of law under Art 50(1) of the *Constitution*. Essentially, suspects or accused persons should not be made to look like guilty persons by virtue of being caged or placed in prison custody during the pendency of the trial.
16. The accused is hereby sentenced to serve 10 years imprisonment and, in the letter, and spirit of section 333(2) of the *CPC* the proportion of the three years pre-trial remand be credited to the sentence imposed by this court.
17. Leave to apply granted. 14 days right of appeal on sentence only.

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

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R. NYAKUNDI

JUDGE

