



Republic v Kibor (Criminal Case 12 of 2023) [2024] KEHC 6628 (KLR) (6 June 2024) (Sentence)

Neutral citation: [2024] KEHC 6628 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 12 OF 2023
RB NGETICH, J
JUNE 6, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

ABRAM KIPSOSIAN KIBOR ACCUSED

SENTENCE

1. The accused person had been charged with the offence of murder contrary to section 203 as read with Section 204 of the *Penal Code*. The particulars of the charge being that the accused on the 16th day of August, 2020 at Emining Centre, Emining Location in Mogotio Sub- County within Baringo County murdered Michael Kirwa Kipyegon Alias Sonko.
2. The charge was read over to the accused who denied and the trial process commenced. However, when the matter came up for hearing on the 17th July,2023, the defence counsel Mr. Mongeri informed the court that he has gone through the witness statements and has had a chance to discuss the matter with his client and the statements reveal a case of manslaughter. He submitted that he would be writing a letter to the prosecution to request plea bargain. The court fixed the matter for mention on the 16th October,2023 for progress on plea bargain.
3. On the 1st March,2024 the plea agreement was duly executed by all the parties and the charge reduced to manslaughter section 202 as read with section 205 of the Penal Code. On the 16th April, 2024, the charge and its particulars were read over and explained to the accused who pleaded guilty and was convicted on his own plea of guilty.

Brief Facts Of The Case

4. Brief facts of the case are that, on the 16th day of August, 2020, at around 1630 hours, the accused person herein received a call from his girlfriend one Rose Kimeli asking him his whereabouts. Before he could answer, the call dropped and he was unable to reach her despite trying to call back. At about



1730hours, the accused arrived at Emining Center and proceeded to a house he rented for his girlfriend. On arrival at his girlfriend's house, he found the house open and his girlfriend's two children were at the door. As soon as he entered the house, he noticed a pair of shoes which he suspected to belong to one Sonko whom he suspected was having an affair with his girlfriend.

5. On the accused opening the door, he found the deceased Michael Kirwa Kipyego alias Sonko having sexual intercourse with his girlfriend. In a fit of rage, the accused locked the door from inside, moved the table and Jerican to the door to prevent the deceased and his girlfriend from leaving the room and picked a knife. On seeing how enraged the accused was, the deceased jumped and held the accused by his shirt. The two fought and in the process of fighting, the accused sustained injuries on the right side of his chest and the fight ended with the accused stabbing the deceased thrice on the left side of the chest before pushing him on the bed while bleeding profusely.
6. The accused's girlfriend knelt down asking for mercy but the accused stabbed her on the right armpit with the same knife. Thereafter the accused opened the door and found a crowd of people who had been attracted by the commotion and screams. He was still holding the knife threatening to kill anyone who approached him. He then dropped the knife at the scene and used the motor cycle which had dropped at the scene to go to Emining Police station where he surrendered and reported the incident.
7. Police visited the scene where they found the deceased and accused's girlfriend lying in a pool of blood unconscious. They were rushed to the Eldama Ravine Sub- County hospital where the deceased was pronounced dead upon arrival. A blood-stained knife was collected from the scene together with a blood-stained torn pink pant, blood stained white and purple flowered skirt, red and black stripes male boxer, blood-stained blue jeans long trouser. The accused was later transferred to Mogotio Police station where his statement under inquiry was recorded on the 18th of August, 2020. He admitted to killing the deceased.
8. Post mortem was conducted on the body of the deceased at Eldama Ravine sub-County Referral hospital on the 20th August, 2020 by Dr. Wangari Wambugu upon identification of the body by James Kiptoo and Parcily Kimutai. The Doctor formed opinion that the cause of death was chest injury caused by penetrating stab wound to the heart due to sharp force trauma following assault.
9. The police file was compiled and the accused charged with the offence of murder now reduced to manslaughter upon request for plea bargain. The court directed that a pre-sentence report be availed before mitigation. The pre-sentence report was duly filed on the 20th May, 2024.

Presentence Report

10. From the report, the accused is 30 years old and has no formal education but he acquired a driving skill and was employed as a tractor driver. That there is record of criminality in accused's family as his father had cut his wife and chased her away a matter that was settled out of court. The inmate's brother is currently in the run as suspect of assault. The father stated that he does not want to see the accused and that he should serve sentence while in prison.
11. The accused regrets his action and is remorseful. He attributes the offence to anger having found the deceased having sex with his wife. He prays for forgiveness from this court and says he acted in self defence and did not intend to kill the deceased.
12. The victim's family could not be traced as their phones could not go through. Efforts to use the area administration was futile as the family's whereabouts remains unknown.
13. A neighbor who was interviewed stated that the accused was not married as he claimed and was just cohabiting with Caroline. The area administrator confirmed that the accused had no family at the time



of his arrest and that he personally did not have criminal record although his family had criminal record. He also indicated that the family has no good ties with community due to their antisocial behavior that has resulted to them being segregated from other members of the community.

14. The accused's family members who were interviewed indicated that they did not want anything to do with the accused and that he should serve his sentence in prison.

Mitigation

15. The defence counsel Ms. Rotich mitigated on behalf of the accused. She submitted that the accused is a first offender, he is a father of 2 children and he should be allowed to be able to raise his children. She urged the court to consider circumstances that the deceased was found with his wife in compromising situation and that the accused has been in custody since the year 2020 and that he entered into plea agreement where the charge was reduced to manslaughter hence saving this court's time.
16. She further submitted that the report is not favorable and that it has not captured the victim's views and urged this court to consider the accused's mitigation. She stated that the accused is aged 30 years and capable of being reformed and re-integrated into the society considering that he is remorseful. She prayed for leniency.
17. The prosecution counsel Ms. Omari urged this court to consider that though the offence is said to have occurred out of rage and the accused stabbed the deceased 3 times on the left of the chest before pushing him on the bed while he was bleeding profusely. That before stabbing the deceased, the accused had locked the door prevented any form of assistance.
18. The prosecution counsel further submitted that the social inquiry report is not favorable and that they are not sure of the safety of the accused if released and the victim's views was not captured; that they are not sure whether they have forgiven the accused. She submitted that no-reconciliatory talks have been done and even though the accused says he is remorseful, he has not reached the victim's family for forgiveness hence urged the court to consider this while sentencing the accused.

Determination

19. Under section 205 of the *Penal Code* a person convicted of Manslaughter is liable to imprisonment for life. However, life sentence was declared unconstitutional by the court of appeal. The court can therefore impose a lesser sentence depending on circumstances of each case.
20. I have considered sentiments by the local administration, accused's family and neighbor. I take note of the fact that the victim's views were not captured in the report. Though the accused stated that he is remorseful, there is no indication that he has made any attempts to seek forgiveness from the victim's family. The accused's family are not also willing to receive him back and he was not also truthful concerning his immediate family as per sentiments of the neighbor. In view of the above, I find it appropriate to impose custodial sentence. I am inclined to impose 25 years imprisonment.
21. Final Orders: -
 1. Accused sentenced to 25 years imprisonment.
 2. The period served in remand to be considered in sentence above.
 3. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 6TH DAY OF JUNE 2024



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RACHEL NGETICH

JUDGE

In the presence of:

CA Elvis.

Ms. Ratemo for state

Ms. Rotich H/B for Mr. Mongeri for the accused.

