



**Republic v Kipchilat (Criminal Case 37 of 2023)
[2024] KEHC 6724 (KLR) (6 June 2024) (Sentence)**

Neutral citation: [2024] KEHC 6724 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 37 OF 2023**

RB NGETICH, J

JUNE 6, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

LANGAS KIMARU KIPCHILAT 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 19th day of April, 2023 at Kabimoi Trading Centre in Koibatek Sub-County within Baringo County murdered Janes Ochieng Ondigo.
2. The accused denied the charge and the case was set down for hearing. However, when the matter came up for mention on the October 17, 2023, the defence counsel Ms. Kogo informed the court that she had perused the witness statements and that she would formerly request the prosecution for plea bargain. The court fixed the matter for mention on the 14th November, 2023 for progress on plea bargain.
3. On February 28, 2024, the plea agreement was duly executed by all the parties where the charge was eventually reduced to manslaughter following a plea-bargaining agreement. On the March 1, 2024, the charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code* 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. On 19th day of April, 2023 at 10.30 p.m, the accused went to drink at Joshets bar where he met the deceased herein. The deceased upon seeing the accused immediately asked him to pay back the money the accused owed him. The accused told the deceased he would look for the money. The two then



began arguing and the argument culminated into a fight. The deceased overpowered the accused and hit his head on the wall. The bar attendant with the help of one Amos intervened and separated them and after a short while, the two went back to their sitting position and continued to drink. About 10 minutes later, the deceased and the accused began fighting again. They were asked to leave the bar by attendant as the bar was about to close.

5. The two left with the deceased going first followed by the accused person. About 3 minutes later, the deceased and the accused began fighting again and in the process, the accused used his Pen Knife to stab the deceased. The fighting attracted a crowd who started screaming upon realizing that the deceased had been stabbed. The accused ran away from the scene but presented himself to Eldama Ravine police station the following day at 8.30am. The accused had visible injuries and was therefore taken for treatment at Eldama Ravine Sub- County hospital by police officers on the same day 20th April, 2023 and a P3 form filled on the 29th of April, 2023. On the 20th of April, 2023 at around 1.47a.m the police visited the scene and found the lifeless body of the deceased with an injury on the left side of his chest and was covered with blood over his clothing. At the scene the murder weapon was not recovered.
6. The accused led the police to recovery of the murder weapon from a river stream. The accused person was interrogated on 1st of May, 2023 where he admitted to killing the deceased and his statement was recorded.
7. Post mortem was conducted on the body of the deceased at Eldama Ravine Sub-County hospital on the 25th of April, 2023 by Dr. Kamau who formed the opinion that the cause of death was due to penetrating injury to the heart by a sharp pointed object. The police file was compiled and the accused charged with the offence of murder now reduced to manslaughter upon request for plea bargain.
8. The court directed that a pre-sentence report be availed before mitigation. The pre-sentence report was duly filed on the 14th May, 2024.

Presentence Report

9. From the report, the accused is 34 years old. He sat for Kenya Certificate of Primary Education (K C P E) in the year 2010. He did KCSE in the year 2014 and scored a mean grade of a C-. Upon completion of his secondary education, the offender has been practicing mixed farming as well as doing small scale businesses to earn a living. Before his arrest, the offender was operating a butchery within Kabimoi Centre. He was married to one Doreen and were blessed with one child aged three years now but his wife left him upon his arrest.
10. The offender admits the charge. He states that the deceased was his customer at the butchery he was operating and the incident was caused by a long-time dispute related to money owed to him by the deceased. He said he acted in self defence by taking a knife which he was using at the butchery and stabbed the deceased. He regrets his action which he attributes to his state of being drunk.
11. The victim's family stated that the death of their son devastated them; that he was married and blessed with three children who have been left without a father upon his demise.
12. The deceased's father confirmed that the accused's family have reached out to him and they have had reconciliation talks which led to the signing of an agreement for the accused's family to pay four cows equivalent to Kshs 100,000 to be used for upkeep of the victim's children. At the time of filing this report, Kshs 90,000 had been paid to them out of the agreed sum of Kshs 100,000. He confirmed that together with his family members, they agreed to forgive the accused and urged this court to be lenient while sentencing the accused.



13. The area administrators and the village elders stated that the offender has not been involved in any criminal acts within the community. They have known the offender as a hardworking man within his community. They confirmed that they were involved in reconciliation process and minutes were recorded. They attributed the incident to boil up emotions and urged this court to exercise leniency towards the accused. The probation officer's opinion is that the home environment is conducive for re-integration of the offender.

Mitigation

14. The defence counsel Ms. Kogo mitigated on behalf of the accused. she submitted that the accused is remorseful and regrets the incident that led to the death of the deceased which was an act of self-defence by the accused the deceased having stepped out and waylaid the accused.
15. She submitted that when the accused stepped out, the deceased held the accused by the head and attempted to twist his neck, a scuffle ensued and the accused was overpowered by the deceased; and during the struggle, the pockets contents of the accused dropped on the ground and among the contents in the pocket was a pen knife which the deceased took note of and attempted to grab it but the accused grabbed it. She further submitted that the deceased attempted to snatch the knife from the accused and in the process, it stabbed the deceased and that it was not the accused's intentions to stab the deceased. She submitted that the deceased was the aggressor in the situation and the knife would have been used to stab the accused.
16. The defence counsel submitted that the accused is remorseful and even surrendered himself to the police and cooperated throughout the process. She added that the accused has sent elders to the home of the deceased and have reconciled. That the accused is a young man aged 34 years old , a single father of a child aged 3 years. She prayed for leniency and urged this court to impose non-custodial sentence so that he can continue providing for his daughter and his parents aged about 70 years. In conclusion counsel submitted that the accused is a trained mason and promises to integrate well in the society if given a second chance.

Determination

17. 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.
18. I have considered the sentiments given by local administration, the victim's family and the family of the accused. I also take note of the circumstances leading to the offence. The accused stated that he acted in self defence. I have also taken note of the fact that there have been reconciliatory talks between the families of the accused and the deceased where they have agreed that the victim's family be paid Kshs 100,000 being value of 4 cows and of the said amount, Kshs 90,00 has been paid. Both families are agreeable to non-custodial sentence. The local administrator is also not opposed to non-custodial sentence. I also take note of the fact that the accused is a first offender and the home environment is conducive for reintegration as per the probation officer's report and opinion. The prosecution has confirmed that the accused is a first offender and the presentence report is favorable to the accused.
19. Further I take note of the fact that the accused upon realizing that he had caused fatal injuries to the deceased, surrendered himself to police and later changed plea following plea bargain therefore saving this courts time and his remorse has been demonstrated by reconciliation between his family and the victim's family. I also take note of the fact that the accused has been in remand for almost one year. In view of the above, I find that non-custodial sentence will be appropriate for the accused.



20. Final orders: -

1. Accused is hereby placed on probation for a period of 3 years.
2. Right of appeal 14 days.

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

RACHEL NGETICH

JUDGE

In the presence of

CA Elvis.

Ms. Ratemo for state

Ms. Kogo for Accused

