



**Republic v Kipkoech (Criminal Case E064 of 2021)
[2024] KEHC 6534 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6534 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E064 OF 2021
RN NYAKUNDI, J
JUNE 6, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

ELPHAS KIPKOECH ACCUSED

RULING

1. The accused person was initially charged with the offence of murder contrary to section 203 and 204 of the Penal Code. The charge was reduced to manslaughter upon a plea bargain agreement that was made on 9th May, 2024 and filed on 13th May, 2024. The Plea bargain agreement was adopted after the court was satisfied that the accused understood its contents in line with the provisions of sections 137A-O of the Criminal Procedure Code.
2. The accused person was represented by learned Counsel Ms. Nelly Chemesunde Too while Mr. Mugun appeared for the prosecution. In the plea bargain agreement, the prosecution proposed a term of ten (10) years less the time spent in custody whereas the defendant suggested a sentence of Three years imprisonment.
3. On behalf of the accused person, learned counsel Ms. Too submitted that in the course of this trial, the accused has learned his lessons and he is remorseful for the offence. That he has had further soul searching and is ready to be rehabilitated within the family and community cycle in his home area. Learned counsel to this end proposed a custodial sentence of three years. Learned counsel placed reliance in the following cases: Republic Versus Charles Lombo Osewe Criminal Case No. 7 of 2013 and Republic versus Ezekiel Lokatukon (2021) eKLR

Determination



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 10 years less the time spent in custody.
5. 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.
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 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.”



8. The factual basis resulting to the offence in question is that on the night of 19th September, 2021 at around 21:30hrs, Edwin Amanywa was sleeping at home when he was awoken by the accused. The accused complained that he had been assaulted by his (Edwin's) guard, namely Peter Emuria Epat, the deceased herein, using a panga and that as a result, he had sustained a cut on his hand. Upon inquiry as to the cause of the assault, the accused stated that the deceased had become jealous of his swift rise at the workplace and believed that he would be overtaken. Edwin cooled him down and as he was offering first aid; the deceased came while carrying a panga. Edwin snatched the panga from the deceased and kept it. He advised the accused to go home because he appeared to be enraged at what had happened. He obliged.
9. The accused then went home and woke his mother up, informing her of the same things that he had told Edwin. His mother also administered first-aid but the hand still bled. It was at this juncture that she called their pastor to help take them to the hospital. Their pastor arrived after 20 minutes and just as he was about to enter the house, the accused left the house. They could not follow him right away but they believed she was heading back to the house that he shared with the deceased. When they eventually caught up to him, they found the accused just emerging from the house. Shortly thereafter, they had groans coming from the house. When the pastor went to check he found the deceased lying in a pool of blood. The pastor, accused and his mother carried the deceased to pastor's car and drove straight to the hospital. It was at the hospital that death was confirmed. The accused was himself attended to and the bleeding arrested before he was placed in custody. A post mortem conducted on 29th October, 2021 confirmed the cause of death to be due to hypovolemic shock.
10. In homicide cases the supreme court in the *Muruatetu versus 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. 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.
11. 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.
12. Having carefully analyzed the facts attendant to the instant case and in considering the objectives of sentencing in totality and the fact that the accused person has pleaded guilty thus saving on judicial time, these factors will all count on imposing a lesser sentence.
13. The other relevant factor in this case is the application of Section 333(2) of the *CPC* on enhanced credit period in favor of the accused for the period spent in remand custody awaiting hearing and determination of his case. 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.”

14. It is trite that the seriousness of the offence, the circumstances under which it was committed and the impact of the offence to the victims are all relevant factors that must also be considered. The personal circumstances of the accused including age, education, previous convictions if any relevant to the case in question, his/her employment and other relevant activities also call for consideration in respect of the possibility of rehabilitation. There is no general applicable list of mitigating and aggravating factors and whether one factor outweighs another is a matter for discretion for the session judge. Clearly, the accused is a young man and a suitable candidate for rehabilitation so that he can live a purpose driven life for the remainder of his years. He needs to number his days aright for the time left as the psalmist ordains in chapter 90:12.
15. For those reasons, I sentence the accused to 8 years and 5 months but consonant with section 333(2) of the CPC, he has been in remand custody for 2 and half years. He therefore receives credit for that period rendering him to serve 6 years imprisonment.
16. Orders accordingly.

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

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R. NYAKUNDI

JUDGE

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