



**Republic v Kaptum (Criminal Case E016 of 2022)
[2024] KEHC 9613 (KLR) (25 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 9613 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E016 OF 2022
RB NGETICH, J
JULY 25, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

KENNETH YATOR KAPTUM 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 were that on the 30th day of August, 2022 at around 7:30 Hours at Kapkwang village, Mosop Sub-Location in Baringo North Sub- County within Baringo County murdered Erastus Kipchumba Kaptum.
2. The accused denied the charge but when the matter came up for hearing on the 12th October, 2023, the accused informed the court that he wished to pursue plea bargain. on the 6th March, 2024, Ms. Ratemo informed the court that they were yet to receive formal application for plea bargain from the defence counsel Mr. Chepkilot but she had spoken to the to the victim’s family who also happen to be the accused’s family and they informed her that negotiations were ongoing. On 9th April, 2024, the plea agreement was duly executed by all the parties resulting in the charge being reduced to manslaughter.
3. On the 9th April, 2024, the accused pleaded guilty to the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code and he was convicted on his own plea of guilty.

Brief Facts Of The Case

4. On 30th day of August, 2022 at around 4.00pm one KOBILLO TAMBURE aged 82 years old who is the mother of the deceased and accused was resting when she witnessed her two sons ERASTUS KIPCHUMBA KAPTUM (deceased) and KENNETH YATOR (accused) pick a quarrel which quickly culminated into a fight.



5. During the fight, the accused person herein went into his house and picked a Panga and chased the deceased towards the main road leading to Kabartonjo. Their mother followed them and due to her old age, she was not able to catch up with them. While at a distance, she heard commotion emanating from the gate to her compound near the road and as she approached there, she saw a crowd of people crying. She heard a person asking loudly "Why have you killed your brother Erastus?" when Kobilo got closer, she saw her son Erastus lying on the ground with his head facing upward and his mouth wide open and was covered in blood. The accused then went back to his house still holding the panga in his hands.
6. The police were notified who went to the scene and collected the body of the deceased from the scene and arrested the accused person herein.
7. On 6th day of September, 2022, postmortem was conducted on the body of the deceased, Erastus Kiplagat Kaptum by Dr. Wangari Wambugu following identification of the body by Samwel Kaptum and Richard Kaptum. Upon examination of the deceased's body, the doctor formed the opinion that the cause of death was as a result of penetrating chest injury due to Sharp force trauma following assault.
8. On the 17th of September, 2022 the accused was questioned and he admitted to killing the deceased and said he was remorseful for the events that led to the deceased's death and his statement under inquiry was recorded. The police file was compiled and the accused charged with the offence of murder now reduced to manslaughter following plea bargain. The court directed that a pre-sentence report be availed before mitigation.

Presentence Report

9. From the report, the accused is 38 years old and the deceased who was his brother was 43 years old. The accused dropped out of school in form one. The accused's mother said the accused committed the offence under the influence of alcohol and said if he is granted non-custodial sentence, he will relocate to Turbo area in Uasin Gishu and stay with his brother.
10. Some of accused's siblings stated that the offender has been troublesome for a while both at family and the community level and has undergone several Alternative Dispute Resolution (ADR) mechanism without any change in behavior. They stated that while under the influence of alcohol, the offender's character is always bad as he disturbs people's peace. They are opposed to the offender being granted community rehabilitation sentence on ground that they are still bitter over the offence he committed and he is not remorseful; that they still fear him; that the deceased children are still emotionally disturbed and his security at the community level is not safe since the community members do not want to see him at the moment.
11. The deceased's wife is opposed to the offender being placed on community rehabilitation on ground that he has been threatening her and quoted what he told her in Kiswahili that:-

"Wewe umekataa kunisamea mimi nitafungwa kifungo changu, nitamaliza nitakupata nyumbani"

Translated to mean

"You have refused to forgive me, I will be jailed, I will finish and I will find you at home."
12. In view of the accused's utterances the deceased's wife and her children are still emotionally affected and are disturbed that their grandmother wants his son the accused herein be released. She added that at the community level the offender is not wanted and for his own safety, he should stay far for a while for the family and community to heal.



13. The deceased's wife added that when the offender is under the influence of alcohol, he is a rough person and he threatens anyone within the family and the community at large. She said the offender's children and the victim's children still fear him and they prefer to have him kept far for now. She stated that reconciliation at family level has not taken place and her in laws and community members are still very bitter towards the offender and if released on non-custodial sentence, his life will be in danger. She proposed lenient custodial sentence.
14. The offender prays for non- custodial sentence and promises to take care of the deceased's children if granted non- custodial sentence. He says he has asked forgiveness from the deceased's wife, mother, siblings and local administration. However, social inquiry has revealed that he has not reconciled with them.
15. The local administration together with the village elder stated that the offender has been troublesome towards his family and a few community members for a while. They confirmed that they have tried ADR severally in respect to the offender but he has not changed his behavior. They attributed his criminality to excessive consumption of alcohol and confirmed that after he killed his own brother, the members of the community have developed lots of anger towards him and if released at the moment, his life will be endangered. They are opposed to the offender being granted community-based rehabilitation as his siblings are not willing to host him and facilitate his re-integration and supervision will be a challenge.
16. The probation officer's opinion is that the offender is not fit for non-custodial sentence as his life will be endangered but leaves it to the court's discretion.

Mitigation

17. The defence counsel Mr. Chepkilot mitigated on behalf of the offender. He submitted that the accused is a young man of productive age of 38 years, married and blessed with five children. He stated that the first-born child of the accused has completed form four and the last one is in grade 3 and they all rely on the accused. He stated that the deceased was the accused's elder brother and the accused indicates that he did not deliberately kill the brother and that he was drunk and they disagreed over a small amount of money.
18. Counsel submitted that the accused has been in custody since September,2022 and he urges the court to consider the period accused has been in custody and the fact that he has changed; that he got saved and was baptized in prison and he undertakes to stop taking alcohol.

Response By State

19. The prosecution counsel Ms. Ratemo opposed non-custodial sentence. That from the social inquiry reports both the 1st and 2nd report, it is quite clear that the community is still hostile towards the accused and efforts for reconciliation between the deceased's wife and the accused were not fruitful. That the deceased's wife is still bitter and the community says that the accused has been troublesome and are opposed to community-based rehabilitation. She stated that the victim was 43 years old married with 3 children. That it is only the mother of the accused who is willing to have him back in the community and the offence committed was serious despite the fact that there was no intent to kill. She urged the court to impose custodial sentence and proposes 20 years imprisonment to allow the accused time to reform before being released to the society.



Determination

20. Under section 205 of the *Penal Code* a person convicted of Manslaughter is liable to imprisonment for life. Life sentence was however declared unconstitutional in the case of Malindi Court of Appeal Criminal Appeal No. 12 of 2021, *Julius Kitsao Manyeso v Republic* delivered on 7th July 2023).
21. I have considered the fact that accused is a first offender. I also take note of the fact that the accused and the deceased were brothers. The accused seeks non-custodial sentence so that he can take care of his children and the children of the deceased. Both his children and deceased's children are still fearful of the accused. The victim's wife, her children, accused's siblings and community are still bitter and hostile towards the accused.
22. From the sentiments given by the family, community and local administration, there is still hostility towards the accused and it will not be safe to impose a none custodial sentence. I take note of the fact that accused is a first offender, the fact that he saved the court's time by pleading guilty to a lesser charge of manslaughter and do impose lenient jail term for his own protection and to allow time for him to reform. I am inclined to impose sentence of 15 years imprisonment.

Final Orders: -

1. Accused to serve 15 years imprisonment.
2. Period served while in remand from the date of arrest to be computed.
3. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 25TH DAY OF JULY 2024.

RACHEL NGETICH

JUDGE

In the presence of

Elvis & Komen – Court Assistants.

Accused Present.

Ms. Ratemo for State.

No appearance for accused.

