



**Republic v Lepapai (Criminal Case E016 of 2021)
[2024] KEHC 9724 (KLR) (10 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9724 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL CASE E016 OF 2021
SN MUTUKU, J
JULY 10, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

FREDRICK TERATI LEPAPAI ACCUSED

RULING

1. The accused herein, Fredrick Terati Lepapai, was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence are that on 10th February, 2021 at Bisil Township in Kajiado Central sub-county within Kajiado County unlawfully killed Daniel Kitasho.
2. A total of eight (8) witnesses have testified for the prosecution. The totality of the evidence for the prosecution is that the deceased died as a result of stab wound to the chest inflicted by the accused on 10th February 2021.
3. After the full trial, this court found that the offence disclosed by the evidence was manslaughter and not murder. He was found guilty and convicted for the offence of murder in a judgment delivered in court on 29th May 2024.
4. Counsel for the accused made brief submissions that the accused was remorseful for what had happened; that accused and deceased were good friends and that both families had helped in funeral arrangements and sought reconciliation. Counsel asked the court to consider non-custodial sentence.
5. The prosecution counsel submitted that the accused is a first offender; that the family of the deceased lost future of a young member and that a custodial sentence would be appropriate.
6. I have read the pre-sentence report commissioned by this court. The report was filed in court on 12th June 2024. It shows that the accused is genuinely remorseful and that both families have been engaged



in negotiations aimed at finding reconciliation and cleansing which will lead to healing. The report shows that the family of the deceased are open to traditional alternative justice system of resolving this issue between the two families as well as a probation order to help the accused in dealing with drugs and other negative social factors.

7. I have considered this matter. Article 159 (2) (c) of the Constitution commands the courts to promote alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms subject to Clause 3 of that Article. Clause 3 requires the court, while promoting alternative forms of dispute resolution to ensure that those forms of dispute resolution do not contravene the Bill of Rights; are not repugnant to justice and morality or do not result in outcomes that are repugnant to justice and morality and are not inconsistent with the Constitution or any written law.
8. I have considered the willingness of the family of the deceased and that of the accused to engage and reach a reconciliation. In my considered view, I do not find seeking peace, reconciliation and healing in accordance with the Maasai traditional and cultural way repugnant to justice and morality and/or inconsistent with the Constitution or any written law. I also find that the traditional and cultural way of resolving a dispute like this one does not contravene the Bill of Rights.
9. For the above reasons, I am persuaded to sentence the accused to a non-custodial sentence. I however, hasten to state that, the pre-sentence report filed in court discloses that the accused requires help to overcome the tendencies of smoking bhang. I will and do hereby sentence the accused to non-custodial sentence under the supervision by a probation officer for a period of one year. The two families can continue to engage and reach an agreement that promotes reconciliation and forgiveness in the traditional and cultural way.
10. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 10TH JULY 2024.

S. N. MUTUKU

JUDGE

