



**Republic v Ekiru (Criminal Case E007 of 2022)
[2024] KEHC 10017 (KLR) (8 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10017 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL CASE E007 OF 2022
RN NYAKUNDI, J
AUGUST 8, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

TONY LOSIKE EKIRU ALIAS LOKUR LOKATO LOKIRU ACCUSED

RULING

1. The accused person faces a charge of murder contrary to section 203 and 204 of the Penal code, but the charge was reduced to manslaughter pursuant to a plea bargain agreement made on 3rd May, 2024. A plea of guilty was entered by the court on the said charge of manslaughter after the court confirmed that the plea bargain agreement was in line with the provisions of section 137A-O of the Criminal Procedure Code. The court was equally satisfied with factual basis and the accused's competence to voluntarily enter into such an agreement.
2. The prosecution was represented by Learned Counsel Mr. Kakoi while Mr. Ekusi learned counsel, represented the accused person.
3. I have had sight of the social inquiry report which was filed on 3rd July, 2023 indicating that the accused had no intention to end the life of his friend and that he never thought that the innocent scuffle would lead to death of his friend. He is said to be remorseful and seeks forgiveness both from the court and the victim's family. The report looked into the accused's family background, personal history, previous convictions, community attitude towards the offence and the circumstances of the offence and it was concluded that the home environment is not safe for the accused person to be released.
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 not more than 15 years and not less than 10 years. The accused person on his part suggested a maximum of 5 years custodial imprisonment.



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*”.
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*”, the Supreme Court outlined the following guidelines as being applicable when the Court was giving consideration to 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 facts leading to the offence in question are that the deceased and the accused are residents of Nakwamekwi village in Lorugum location. On 20th May, 2022 at around 7:00AM the accused and the deceased played a game called “simbi”. It was their understanding that whoever wins gets Kshs. 100/= from the opponent. The deceased won the game. Instead of the accused giving him Kshs. 100/= he gave him Kshs. 80/=. The deceased refused and returned the money to the accused. The accused started moving away and the deceased followed him. In the process there was a fight. The accused grabbed the deceased’s neck and inter-locked it in his armpit and threw themselves on the ground. The deceased remained motionless but called out for help. The accused walked away saying he was going to fully arm himself and come back to finish what he started. Later the accused came back with a motorcycle. He found the deceased in a serious condition. He took him to Lorugum Sub-County Hospital. At around 1:30PM the same day, the deceased passed on. A post mortem was carried on the body of the



deceased and the cause of death was established to be “head injury (secondary) with scalp heamatoma and subdural haematoma.”

9. In *V M K v Republic* [2015] eKLR ten years in jail was given for manslaughter. The trend has been that when the accused person uses a dangerous weapon in committing the crime, the court is likely to sentence the accused to life imprisonment. The present circumstances reveal a fight between friends who had a slight difference, not knowing that the same would be fatal. The accused seemed to be so determined to harm the deceased for reasons that he indicated that he was going to harm himself and get to finish what he started.
10. I have considered the sentencing objectives in totality. The accused person is relatively a young person and it was established from the pre-sentence report that the community is still not safe in the meantime. In this regard, this court has to undertake a balancing act between aggravating and mitigation factors to arrive at a fair and proportionate sentence for the accused. This lose of life from the facts of this case could have been avoided if the accused person could have retreated or not use excessive force against the deceased. The people of Kenya gave themselves a constitution in 2010 which entrenches the right to life under Article 26 of the constitution. This means no one is permitted to terminate another human being’s life without any justification or excuse. The accused person has not shown that there were compelling and exceptional circumstances to impair the life of the deceased without any hope of survival. Weighing one factor after another I sentence the accused to 10 years imprisonment with a residual clause of giving credit for the period spent in remand custody before the conclusion of his case as provided for under Section 333(2) of the C.P.C. In essence the 10 years imprisonment shall take into account the time when he was arraigned before court which from the record is effective from 6,6,2024.
11. Orders accordingly.

DATED AND SIGNED AT LODWAR THIS 8TH DAY OF AUGUST, 2024

R. NYAKUNDI

JUDGE

In the Presence of

Kipkosgey Advocate holding brief for

Mr. Ekusi Advocate for the Accused

Mr. Kakoi for the State

Accused

