



**Republic v Ekote (Criminal Case E005 of 2022)  
[2024] KEHC 10018 (KLR) (8 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10018 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL CASE E005 OF 2022  
RN NYAKUNDI, J  
AUGUST 8, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JUSTUS EKAI EKOTE ..... ACCUSED**

**RULING**

1. Justus Ekai Ekote was charged with the offence of murder contrary to section 203 and 204 of the *Penal Code*. The accused entered into a plea bargain agreement made on 3<sup>rd</sup> May, 2024 and the charge was reduced to manslaughter. A plea was entered on the said charge of manslaughter after the court examined the same and accepted it pursuant to the provisions of section 137A-O of the *Criminal Procedure Code*. The court was equally satisfied with factual matrix and the accused’s competence to voluntarily enter into such an agreement.
2. The accused person was represented by learned Counsel Ms. Kariuki while Mr. Edward Kakoi appeared for the state. On record, I have a plea bargain agreement where the prosecution proposed a custodial sentence of not more than fifteen (15) years and not less than 10 years. On his part, the accused has proposed a maximum sentence of Five years imprisonment.
3. I have had occasion to through the victim impact statement and I take note that the accused person is yet to reconcile with the family of the victim. The family reported that they are affected emotionally because after the incident nobody has gone to them to say sorry or explain to them what happened.

**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, both parties proposed appropriate sentences that they wish to have imposed.



5. In order to arrive at an appropriate sentence which conforms with the objectives of sentencing and the guidelines laid out 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-adaption of the offender;
  - (h) any other factor that the Court considers relevant."
8. The facts leading to the offence are that the deceased and the accused lived in Kalokol area. On the night of 11<sup>th</sup> March, 2022, they were both in Kalokol town. The deceased was sitting on his motorbike beside the road. The accused was trying to kick-start his motorbike in the middle of the road but it had a hard start. The deceased advised the accused that instead of trying to kick-start his motorbike in the middle of the road, he should push it off the road and then try to kick start. The advice annoyed the accused who mercilessly started beating the deceased. The deceased had serious injuries and was taken to hospital where he was pronounced dead due to splenic rupture. A post mortem was conducted on the body of the deceased and the cause of death was established to be "internal hemorrhage secondary to ruptured spleen."



9. In cases such as this, the supreme court in the *Muruatetu versus Republic 1 2017* eKLR laid down the guidelines on sentencing to inform 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 in determining the applicable sentence. I have stated elsewhere 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. In the instant case and on the face of it there are no compelling or substantial circumstances which could have triggered the use of excessive force on the part of the accused person as against the deceased. 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.
10. I have carefully analyzed the factual matrix of the instant case and considered the objectives of sentencing in totality and that the accused person has pleaded guilty thus saving on judicial time. The said factors count in imposing an appropriate sentence. Having considered all the issues above, the accused is sentenced to 10 years custodial sentence with a credit period of the time spent in pre-trial detention pending trial of his case as initiated by the prosecution. The sentence so imposed shall take effect on the 1.4.2022 in line with the letter and spirit of Section 333(2) pf the *Criminal Procedure Code*.
11. Orders accordingly.

**DATED AND SIGNED AT ELDORET THIS 8<sup>TH</sup> DAY OF AUGUST 2024**

**IN THE PRESENCE OF**

**MR. KAKOI FOR THE DPP**

**ACCUSED**

**R. NYAKUNDI**

**JUDGE**

