



**Republic v Ereng (Criminal Case E002 of 2023)  
[2024] KEHC 9990 (KLR) (8 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 9990 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL CASE E002 OF 2023  
RN NYAKUNDI, J  
AUGUST 8, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**EMURIA ERENG ..... ACCUSED**

**RULING**

1. Emuria Ereng was charged with the offence of murder contrary to section 203 and 204 of the [Penal Code](#). The particulars of the offence were that on 9<sup>th</sup> December, 2022, at Matakul area within Turkana West-Sub county he murdered Losike Ewoton. The accused entered into a plea bargain agreement made on 2<sup>nd</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 circumstances and the accused’s competence to voluntarily enter into such an agreement.
2. The accused person was represented by learned Counsel Mr. Ondabu while Mr. Edward Kakoi appeared for the state. The circumstances of the case are that the accused, being 17 years of age had a fight with a fellow pastoralist at a water point in the village, which resulted into the death of the victim. He had fetched water for his goats at the water point but he found the victim giving his goats the water that the accused had fetched. This resulted into a confrontation that led to a physical fight. The accused says that the victim attacked him with a popular traditional weapon commonly referred to as a ‘round about’, leaving him with cut wounds on his forehead, on the palm of his hands, and near his left ear. The accused then reached for an AK47 rifle that was in his possession in an attempt to defend himself. He stated that it was in the struggle for the rifle with the victim, that the firearm went off and shot the victim at close range, leaving him dead. He surrendered the rifle to police during his arrest; he stated in the report the rifle belonged to his father.



## Determination

3. 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.
4. In order to arrive at an appropriate sentence which is in line with the objectives of sentencing and the guidelines 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.
5. 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.
6. 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.”
7. In cases such as this, the supreme court in the *Muruatetu v Republic* [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.

8. I have carefully analyzed the facts 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 6 years' imprisonment with a credit period of the time spent in pre-trial detention pending trial, pursuant to the provisions of section 333(2) of the *Criminal Procedure Code*.
9. Orders accordingly.

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

.....

**R. NYAKUNDI**

**JUDGE**

