



**Republic v Keter (Criminal Case 28 of 2019)
[2024] KEHC 11078 (KLR) (24 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11078 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE 28 OF 2019
RL KORIR, J
SEPTEMBER 24, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

GILBERT KIPNGETICH KETER ACCUSED

JUDGMENT

Judgement and Sentence Upon Plea Agreement.

1. The Accused, Gilbert Kipngetch Keter 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 were that on 13th December 2019 at Kagasik Village in Sotik sub-county within Bomet County, he murdered Edwin Kipkorir Kosgei.
2. The Accused took plea on 3rd March 2020. The charge and every element thereof was read and explained to him in the Kipsigis language which he understood. He pleaded not guilty to the offence and the court entered a plea of not guilty.
3. During the course of the trial, the Accused made an offer to plea bargain. The Plea Agreement was drafted and was dated 27th November 2023. It indicated that the Accused had agreed to plead guilty to the lesser offence of manslaughter.
4. On 15th April 2024, this court accepted the Plea Agreement after interviewing the Accused and satisfying itself that the Accused had executed the Plea Agreement voluntarily.
5. On the same day (15th April 2024), the Accused took plea for the offence of manslaughter. The charge and every element thereof was read and explained to him in the Kipsigis language which he understood and he pleaded guilty. The court entered a plea of guilty for the offence of manslaughter.



6. The facts as read by the Prosecutor and captured in the Plea Agreement are as follows:-

“On 12/12/2019 at about 1900 hours, the Accused and the deceased were at the house of one Janet Kurgat for a traditional passing out ceremony for new initiates. A fight ensued between the two, with the Accused vowing to kill the deceased. The Accused drew a knife from his waist and attempted to stab the deceased. The two were separated by other attendees at the ceremony. The party went on into the night.

On 23/12/2019 at about 3 a.m. as the crowd was leaving the venue of the ceremony, the Accused and deceased were found along a path arguing for the second time. Shortly after the deceased was heard calling out for help saying he had been stabbed. They rushed back to the scene and found the deceased lying down bleeding profusely. The Accused was nowhere to be seen. At the scene was a blood stained knife. The deceased succumbed at the scene before he was taken to hospital.

Police officers were notified of the incident and collected the body of the deceased to Kapkatet Sub County Hospital Mortuary. On 19/12/2019, a post mortem performed on the body of the deceased established that the cause of death was cardiorespiratory arrest secondary to massive blood loss following stab wound inflicted by a sharp object on the neck.

The Accused was later arraigned in court and charged with murder which offence has now been commuted to a charge of manslaughter”.

7. The Accused accepted the facts as true and the court convicted him on his own guilty plea for the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The court scheduled a sentencing hearing and also directed the Probation Officer to file a pre-sentence report.

Pre-Sentence Report

8. The report stated that the Accused regretted the offence and prayed for this court’s leniency. That he took responsibility for his actions and asked this court to grant him a non-custodial sentence.

9. The community stated that the Accused was of good conduct and character. That he had no criminal record. They regarded the offence as unfortunate and preventable had the Accused heeded to their calls to refrain from fighting with the deceased. The community further stated that the Accused had good ties within the community and his release on a non-custodial sentence would not endanger those around him.

Victim Impact Statement.

10. The deceased’s family stated that the death of the deceased had dealt a big blow to them both emotionally and financially. That they had been robbed off a young and energetic man who had a promising future.

11. The report stated that the reconciliation process had begun with the Accused’s family giving one cow as per the Kipsigis traditions. That the Accused’s family met all the hospital bills and funeral expenses incurred by the deceased’s family and in return, the deceased’s family forgave the Accused’s family. The deceased’s family however stated that other rituals had yet to be performed.



Mitigation

12. Mitigation by the Accused was made on his behalf by his learned counsel, Mr. Kadet. Counsel submitted that the Accused had showed remorse and sought forgiveness from the deceased's family. That he was drunk at the time he committed the offence and that he was a first offender.
13. It was counsel's submission that the Accused was a person of integrity and had been rehabilitated while he had been in remand since 2019. That he was now born again and professed the Christian faith.
14. Counsel submitted that the act leading to the offence was not deliberate and that the Accused had saved the court's time by plea bargaining. That this court should grant him a non-custodial sentence.

The State's submissions

15. Mr. Njeru, the learned prosecution counsel submitted that the Accused saved judicial time and the State's resources by plea bargaining. Counsel submitted that the Accused was a first offender and also applauded his salvation as good.
16. Counsel submitted that the circumstances of the case showed that the Accused had the intention to kill the deceased and the court should issue a proportionate sentence. He further submitted that a custodial sentence would deter others which will discourage alcoholism and crime. He stated that it was in the interest of the state that crime be punished. Commenting on the Accused's salvation, counsel urged the court "to give unto God what belongs to God and to Ceaser what belong to Ceaser".

Analysis

17. Sentencing serves multiple purposes as enumerated in the Sentencing Policy Guidelines 2023 which outline the objectives of sentencing at paragraph 1.3.1 as follows:-

Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other- in so far as possible, sentences imposed should be geared towards meeting the objectives in totality.

- i. Retribution.
 - ii. Deterrence.
 - iii. Rehabilitation.
 - iv. Restorative justice.
 - v. Community Protection.
 - vi. Denunciation.
 - vii. Reconciliation.
 - viii. Reintegration.
18. The penal section for the offence of manslaughter is contained in section 205 of the Penal Code which provides:-

Any person who commits the felony of manslaughter is liable to imprisonment for life.



19. I have considered the circumstances of the case. The Accused and the deceased were said to be friends and fought over a girlfriend. The deceased who was more muscular overpowered the Accused who then rushed to the house, grabbed a knife and fatally stabbed the deceased.
20. I have also considered the Pre-Sentence Report which stated that the Accused had no previous criminal record and had good ties within the community. This court has considered the Accused's mitigation that he was remorseful and regretted his actions. That the Accused took full responsibility for his actions. Indeed the record shows that the Accused made a plea offer to the state way back in February 2022 and his offer was not expeditiously actuated by his counsel and the prosecution. His family has taken steps to undertake traditional reconciliation with the deceased's family by giving a cow and had assisted in paying the medical and funeral expenses of the accused. The Probation stated that the deceased's family had accepted the reconciliation and looked forward to more traditional cleansing rites. To the mind of the court, the objective of reconciliation had been met and the offenders family and victim's family were well on their way to achieving restorative justice.
21. In the final analysis, having considered the circumstances of the case, the Accused's mitigation, the pre-sentence report and the victim impact statement, it is my finding that the due to the circumstances of this case, the Accused merits the mercy of this court and a lenient sentence.
22. I have also taken into consideration that the Accused was arraigned in this court on 13th December 2019. He was granted bail on 1st December 2020 but was unable to meet the bond terms. He has therefore been in pre-trial custody since 13th December 2019, a period close to five years. I consider this sufficient custodial period.
23. The Accused is sentenced to serve 3 years' Probation from today.

Orders accordingly.

JUDGEMENT DELIVERED, DATED AND SIGNED THIS 24TH DAY OF SEPTEMBER, 2024.

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R. LAGAT-KORIR

JUDGE

Judgement delivered in the presence of Mr Njeru for the state, Mr Kipngetich holding brief for Mr. Kadet for the Accused and Siele (Court Assistant).

