



**Republic v Too (Criminal Case 3 of 2020)
[2024] KEHC 13606 (KLR) (23 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 13606 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL CASE 3 OF 2020
SN MUTUKU, J
SEPTEMBER 23, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

MICHAEL KIPKOSGEI TOO ACCUSED

RULING

1. Michael Kipkosgei Too, the accused, was initially charged with murder contrary to section 203 as read with section 204 of the Penal Code. He pleaded not guilty to this charge in which the accused was accused of killing Rodah Mwende Musombe on 4th February 2020 at Kware area in Ongata Rongai Township, Kajiado North Sub-County within Kajiado County. The prosecution presented evidence of two witnesses Mumo Musombe (PW1) and Gregory Maithya Kimeu (PW2). Thereafter, the case took a different trajectory after the accused and the State entered into a Plea-Bargaining Agreement. The charge was reduced to manslaughter with the same particulars. On 10th June 2024, the plea-bargaining proceedings were conducted.
2. The accused pleaded guilty to manslaughter and admitted the facts as presented. The facts of the case are that the accused and the deceased Rodah Mwende booked a room at Nzee Bar located at Kware area within Ongata Rongai at 1330 hours on 4th February 2020. Shortly after they entered the room, the accused was seen b Diana Gatwiri and Joyce Ntinyari Mbae peeping through the door of the room he had occupied with the deceased and left hurriedly after closing the door from outside. He started running away and managed to escape. The two women became suspicious and opened the door of the room the accused had just left. They noticed blood flowing from under the bed and a human hand protruding. They started screaming shouting “mjamaa ameua”. At the time of escape, the accused was wearing an orange jumper.
3. At around 3.30pm the same day, the accused met Josephat Miruka Okenye, a boda boda rider known to him. The accused told Josephat that he had a problem that he wanted to share with him. The accused



told Josephat that earlier that day he had met his girlfriend whom, while having sex had disclosed to him that she has infected him with HIV AIDS and that the accused had grabbed the girl by the neck, strangled her and when he noticed that she was not breathing, he had cut off her tongue using his teeth. To the surprise of Josephat, the accused removed a piece of human tongue from his pocket and placed it on the table. Josephat was shocked. He left the accused and walked out of the bar.

4. Josephat informed one Derick of what the accused had told him. He asked Derick to call the police as Josephat returned to the table where the accused was so as not to make him suspicious. The accused was later arrested.
5. The matter was reported at Ongata Rongai Police Station. The body of the deceased was removed from the scene to the City Mortuary. A postmortem was conducted on the body on 10th February 2020. The cause of death was neck compression due to manual strangulation. The Postmortem report was produced as exhibit 1.
6. The accused admitted the facts as presented. This court found him guilty of the offence of manslaughter and convicted him on his own plea of guilty.
7. During mitigation hearing, the accused submitted through his legal counsel that he was aged 29 years; that he is the fourth born in his family, was single and had no children; that he is a first offender; that he has reformed while in custody where he had obtained two certificates on Christian and discipline matters and that he was remorseful.
8. This court commissioned a pre-sentence report which has been filed. It is dated 8th July 2024. I have read the report and the recommendations contained therein. I have also considered the facts of this case and the circumstances that led to this offence. It is indeed sad that the deceased lost her life in such circumstances. I note that the accused claims to be remorseful. However, there is no turning back the clock as the deceased has already lost her life. While the accused seeks a non-custodial sentence, it is my considered view that a mix of custodial and non-custodial sentence will serve the purpose.
9. Consequently, the accused shall serve three (3) years jail term after which he will be placed under the supervision of probation officers for one (1) year. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 23RD DAY OF SEPTEMBER 2024.

S. N. MUTUKU

JUDGE

