



**Republic v Koima (Criminal Case 43 of 2023)  
[2024] KEHC 11271 (KLR) (19 September 2024) (Sentence)**

Neutral citation: [2024] KEHC 11271 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDAMA RAVINE  
CRIMINAL CASE 43 OF 2023  
RB NGETICH, J  
SEPTEMBER 19, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**GIDEON KIPROP KOIMA ..... ACCUSED**

**SENTENCE**

1. The accused Gideon Kiprop Koima had been charged with the offence of murder contrary to section 203 as read with Section 204 of the [Penal Code](#). The particulars of the charge was that on the 22<sup>nd</sup> day of December, 2020 at Arama Village, Poror Arama Location in Koibatek Sub-county within Baringo County, the accused person willfully and unlawfully murdered Kennedy Kiptanui Kemei.
2. The accused denied the charge but when the matter came up for hearing on the 16<sup>th</sup> November, 2023, the defence counsel Mr. Kiptoo informed the court that he had information that parties were willing to pursue plea bargain and that he would be forwarding a formal application to the Prosecution. He stated that he had received reconciliatory minutes from the families which he was to supply to the prosecution. This position was confirmed by the prosecution counsel Ms. Ratemo who informed the court that three witnesses were in court and they had informed her that they are negotiating. The matter was fixed for mention on the 16<sup>th</sup> January, 2024 to confirm the position on plea bargain.
3. On 12<sup>th</sup> June, 2024, the plea agreement was duly executed by all the parties resulting in the charge being reduced to manslaughter. On 9<sup>th</sup> April, 2024, the charge of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#) and its particulars were read over and explained to the accused. He denied the charge.



## **Brief facts of the case**

4. On the 21<sup>st</sup> day of November 2020, the deceased Kennedy Kiptanui Kemei who was a cousin to the accused sent Kshs 200 to accused who was with the deceased. While he was sending the money the accused managed to see the deceased's Mpesa pin and planned to steal money from deceased's phone. He withdrew the money from accused phone make ITEL2160 at an Mpesa Agent by the name Intensive Capital Mercy shop situated within Arama centre. The accused also transferred Kshs 5000/= to his Mpesa account No 07231XXXXX on the 29<sup>th</sup> November 2020.
5. On the 30<sup>th</sup> of November 2020 the owner of Intersave Capital Mercy shop one Shadrack Kimaiyo opened the shop and on switching on his Mpesa mobile phone, he noticed that the deceased had withdrawn money from his Agent number 012415 on 29<sup>th</sup> November 2020 using his Mpesa line 07929XXXXX.
6. Later that day the accused went to Intersave Capital Mercy shop and told the owner that he had been sent by the deceased to collect the money which the deceased had withdrawn the previous day claiming that the deceased had gone to his shamba with casual workers and needed the money to pay them only for the shop owner to later learn that the accused had lied to him when he heard the deceased complaining that the accused had stolen from him. This was after the deceased obtained an Mpesa statement from his Mpesa account and confirmed that a total of Kshs 17,700 was missing from the account.
7. After learning that money had been stolen from his Mpesa account, the deceased called the accused to his home to discuss the lost money and while talking, an argument ensued leading to accused stabbing the deceased by hitting him with a blunt object on the head. The deceased fell down and lost consciousness. The incident was witnessed by the accused's wife.
8. The deceased's brother one Maxwell Kibet Kemei found the deceased lying outside but assumed he was drunk. In the morning of 23<sup>rd</sup> December, 2020 the accused's wife called the deceased's brother asking him why he had left his brother outside overnight while he was injured. The deceased was rushed to Eldama Ravine Nursing home where he was later referred to Moi Teaching and Referral Hospital in Eldoret while in a coma and admitted in the ICU for two weeks and in the general ward for another 2 weeks. Report of Assault and stealing was made by deceased's uncle Samson kipyegon Koima on behalf of the deceased who was admitted in hospital at Eldama Ravine Police Station.
9. On 25<sup>th</sup> January 2021, the deceased was discharged from hospital and he continued receiving treatment while at home. At the time, the deceased was stammering as a result of the injuries. He was issued with a P3 form which showed the degree of injury as Grievous Harm.
10. On the 29<sup>th</sup> of January 2021 the accused was arrested with the assistance of members of the public and escorted to Eldama Ravine Police Station where he was charged with two counts of offences being grievous harm and stealing.
11. On 1<sup>st</sup> March 2021, the deceased unfortunately succumbed to the injuries while at his grandmother's home in Kabimoi. His body was taken to Eldama Ravine Sub County Hospital for preservation awaiting Postmortem. The death report was made to police on 5<sup>th</sup> March 2021 by Samson Kipyegon Koima who is paternal uncle to the deceased.
12. On the 10<sup>th</sup> March 2021, post mortem was conducted on the body of the deceased by Dr. Henry Singoei upon identification by Lincoln Kiprono and Nicholas Marindany and the doctor formed opinion that the cause of death was respiratory failure secondary to hypostatic pneumonia secondary



to increased intracranial hematoma. Police file was compiled and the accused charged with the offence of murder now reduced to manslaughter upon request for plea bargain.

13. The court directed that a pre-sentence report be availed before mitigation.

### **Pre-sentence Report**

14. From the report, the offender dropped out of school in class 6 due to socio- Economic challenges and started engaging in farming, an activity he has been doing up to the day of his arrest for the offence herein. He is married with two Children. The offender has no history of criminality.
15. He admits the offence and says he owed the deceased (Victim) Kshs 17200 which he had misused and on the fateful day, the deceased had called him asking for his money and later visited his house while drunk on alcohol and demanded for his money and when he said he did not have the money, the deceased became hungry and picked a wooden rod to hit him but the offender overpowered him and hit him with the said wooden rod upon which the victim fell down and he was later pronounced death.
16. He prays for leniency and submit that he did not intend to kill his cousin/friend but he acted out of self-defense and regrets the circumstances leading to the offence. From the report, the victim's family are devastated for the loss of their son and added that they had known the accused as a very responsible man who had been working very hard to support his family and the victim's father urged the court to pardon the accused so that he may continue taking care of his young children and added that the offender's family representatives have sought for forgiveness from their family and they have reconciled.
17. From the report the accused's family paid the victim's family nine (9) cows as compensation for death as per kalenjin tradition and a cleansing ceremony was undertaken on the 28<sup>th</sup> Day of March 2024. They urged the court to pardon the accused as it will be in the best interest of his children who are under the care of his wife; and for cleansing rituals in respect to accused to be completed.
18. The area administrators confirmed that the two families have reconciled. The probation officer's opinion is that home environment is conducive since the two parties have reconciled and agreed to settle the matter traditionally as per the customary law and recommended non-custodial sentence.

### **Mitigation**

19. The defence counsel Mr. Kiptoo mitigated on behalf of the accused. He stated that the accused is a young man aged approximately 29 years old. That he is married with two children. That the two families have agreed and what is awaiting is cleansing of the accused which will be conducted upon his release. He stated that the father of the deceased has allowed accused's family to live with the deceased's family and that the accused is a step-brother to the deceased.
20. Counsel urged the court to consider probation report while making the decision and submitted that the accused regrets his actions stating that it was not intentional. That the accused is a first offender. He prayed for a non-custodial sentence and submitted that the accused has saved the court's time by accepting plea bargain.

### **Responded By State**

21. The prosecution counsel Ms. Omari submitted that she had looked at the pre-sentence report which is favorable to the accused. She submitted that the accused was the step brother to the deceased and from the facts, the deceased underwent through a painful death; that the deceased stayed in hospital for long before he succumbed to the injuries.



22. Counsel submitted that the deceased was a young man full of life ahead of him and his only mistake was to ask for money the accused had taken. That from the facts, the accused wronged the deceased twice and, in the circumstances, she submits for a custodial sentence.

**Determination**

23. Under section 205 of the Penal Code a person convicted of Manslaughter is liable to imprisonment for life.

24. In our case at hand the facts of the case is that on the material day, the deceased asked for his money from the accused, they quarreled which culminated in a fight and the accused hitting the deceased with a blunt object on the head whereby he fell down and lost consciousness. The deceased was taken ill and hospitalized for some time owing to the injuries sustained from the assault which he eventually succumbed.

25. The pre-sentence report is favorable to the accused person. The secondary victims as well as the community are not opposed the accused being granted community-based rehabilitation stating that there was reconciliation and the accused persons have compensated the victims the nine cows as agreed and the two families are now living in harmony.

26. I have however taken into consideration the circumstances leading to commission of the offence and I am of the view that the accused’s act of aggression towards the deceased after illegally withdrawal money from his Mpesa account was unwarranted. He turned aggressor instead of expressing remorse for stealing his money. I also take note of the fact that the deceased was subjected to a lot of pain and in my view, the accused’s action should not go unpunished despite the reconciliation. However, in view of the fact that he agreed to plead guilty to a lesser charge of manslaughter there by saving the court’s time and the fact that there is no animosity between the two families, I am inclined to impose a lenient custodial sentence so as to deter other would be offenders and as assist rehabilitate the accused to transform to a law-abiding citizen.

27. Final Orders: -

- 1. Accused to serve 5 years imprisonment.
- 2. The period served in remand to be computed in the sentence.
- 3. Right of appeal 14 days.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 19TH DAY OF SEPTEMBER 2024.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

CA Karanja.

Ms. Omari for state.

Accused present.

Mr. Kiptoo for Accused Absent.

