



**Kigen v Republic (Miscellaneous Case E231 of 2021)  
[2023] KEHC 890 (KLR) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 890 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CASE E231 OF 2021  
RN NYAKUNDI, J  
FEBRUARY 10, 2023**

**BETWEEN**

**MARTIN CHEBON KIGEN ..... ACCUSED**

**AND**

**REPUBLIC ..... PROSECUTOR**

**RULING**

1. The applicant was initially charged of murder contrary to section 203 as read with section 204 of the Penal Code which prescribes a maximum sentence of the death penalty.
2. Before the trial commenced, he entered into negotiations with the Director of Public Prosecution which culminated into a plea –bargaining agreement pursuant to section 137(a) of the Criminal Procedure Code. As a consequence, the offence of homicide under section 203 was reduced with that of manslaughter in section 202 as read with section 205 of the Penal Code. This being a less offence to murder, it carries a maximum sentence of life imprisonment. Following the introduction of Plea bargaining agreements, it does occupy a central position among those concerned with the operations of Criminal Justice System in Kenya. Notwithstanding, that position they appears to be some uncertainty and confusion both inside and outside the Criminal Justice System as to the nature, scope, purpose and value of plea bargaining as a form of case resolution in our Criminal Justice System. In the instance case the record demonstrates that the applicant on being briefed of the factual matrix and the law he voluntarily consented to plead guilty to a lesser offence of manslaughter. In practical terms, the applicant action was to give effect with the following principals
3.
  - a. In ensuring prompt resolution of his case
  - b. To avoid delay which is mainly a component of trials in murder cases.



- c. An acknowledgment of guilty which manifest the willingness to accept responsibility for his conduct.
6. Finally, to the plea of guilty and conviction Sewe J. sentenced the applicant to Five (5) years imprisonment. The record available indicates factors on mitigation and aggravating factors having played a role in exercising judicial discretion in passing the appropriate sentence.
7. The applicant takes issue with the sentence and applied for review relying on the principles in: *Republic v Charles Mandah* Cr Appeal No27 of 2020, together with section 213 and 211 of the *Criminal Procedure Code* and Article 50(1) of the constitution. In accordance with the constant case law, section 362, 364, and 382 of the *Criminal Procedure Code* I find no sufficient reasons that the sentence offence either statute law or the constitution, it is salutary to appreciate that the session judge exercised her discretionary powers within the threshold of the law. The upshot of it all the application for review of sentence is denied.

**DATED. SIGNED AND DELIVERED AT ELDORET THIS 10<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**R. NYAKUNDI**

**JUDGE**

