



**Republic v Chelimo (Criminal Case E030 of 2021)  
[2023] KEHC 4010 (KLR) (2 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 4010 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE E030 OF 2021**

**RB NGETICH, J**

**MAY 2, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SHADRACK KIRWA CHELIMO ..... ACCUSED**

**RULING**

1. The accused Shadrack Chelimo was charged with an offence of murder contrary to section 203 and 204 of the *Penal Code*. Particulars of the charge being that the accused on the night of 16<sup>th</sup> day of September, 2021 at Travellers Bar at Emining Market, Emining Location within Mogotio sub-county in Baringo County murdered Kelvin Kibet Mutai.
2. The accused pleaded not guilty to the charge. On the 21.03.22, the defence counsel Mr. Chebii informed the court that the two families involved were pursuing reconciliation and he was to make formal request to the Office of the Director of the Public prosecution for plea bargain. Following the new development the court fixed the matter for mention on 16.05.2022 to confirm progress on plea bargain.
3. On the 16.05.23, the state counsel Mr. Mongare informed the court that the state was agreeable to the request for plea bargaining by the defence and requested counsel for the defence to serve their office with a formal request.
4. On the 13.03.23 Mr. Chebii informed the court that the two families sat and reached at an agreement. The state counsel Ms. Ratemo requested for 14 days to prepare a plea agreement; the court directed that the matter be mentioned on the 27.03.23 to confirm the position on the plea bargain.
5. On the 27.03.23 Plea bargain agreement was executed by the accused, defence counsel and the state counsel. The charge was reduced to manslaughter and on the same day, the charge and its full particulars were read over and explained to the accused who pleaded guilty.



6. Brief particulars of the charge are that on the 16<sup>th</sup> day of September, 2021, at about 1830hours the accused together with his friend Shadrack Kirwa Chelimo went to traveler's bar to refresh themselves, ordered for drinks and were later joined by Bethwell Kertich and Kelvin Kiprono. While they were drinking, the accused told the other customers to stop looking at him. After a while the accused picked a beer bottle and threw it with an intention of hitting Bethwell Kertich but it hit the wall and the pieces accidentally hit the deceased on the head. The deceased bled and the employees of the bar took a basin and washed the deceased's bleeding head and after first aid, the deceased said he was okay and went home.
7. The next day at 6:30a.m, the accused and Bethwell Kertich went to the deceased's home and found him asleep. They woke him up and he said he was okay; the accused asked for forgiveness from the deceased who agreed to forgive him. Later at 10a.m, the deceased called his employee telling him he was unwell; his condition deteriorated and he was taken to Emining Private clinic where first aid was done. The next day 18<sup>th</sup> September 2021, he was returned to the clinic where he was referred to Eldama Ravine sub-county Hospital as he was unable to speak. He was then referred to Nakuru level five Hospital for scanning purposes where he was admitted up to 24.9.21 at 11:00p.m when he succumbed while undergoing treatment.
8. On the 18.9.21, postmortem was done after the body being identified to the doctor by family member. The doctor found that the cause of the death was severe injury to the head due to single blunt force trauma to the head in keeping with fatal assault.
9. Investigations were done and the accused was charged with the offence of murder which has now been reduced to manslaughter after a plea bargain agreement.
10. The accused admitted that the facts read to him in court were correct. He was convicted on his own plea guilty of the charge of manslaughter as provided under section 202 as read with section 205 of the Penal code.
11. The Prosecution stated that the accused may be treated as a first offender as there were no previous records. The court directed pre-sentence report be prepared before mitigation.
12. The defence counsel Mr. Chebii mitigated on behalf of the accused and stated that the accused and the deceased were good friends, the accused is remorseful, he didn't intent to kill the deceased, both families have reconciled, the accused is a first offender, a bread winner of the family, he prayed that the court exercises leniency on the accused and place him on a non-custodial sentence so that he can assist the family and his mother.

### **Analysis and Determination**

13. Under section 205 of the [Penal Code](#), a person convicted of Manslaughter is liable to imprisonment for life. Record show that the accused was aiming at hitting one Bethwel Kertich with the beer bottle which landed on the wall and a piece of the bottle hit the deceased on the head causing injuries which he succumbed; it is clear that he did not intent to kill the deceased who was his friend and the whole incident was accidental.
14. From mitigation, the accused is remorseful of his action. The pre-sentence report indicates the accused and the deceased's family have reconciled and 9 cows and a goat have been paid by the family of the accused to the deceased family as atonement to the death of their loved one as per the Kipsigis traditions. From the report the local administration and the deceased's family are agreeable to the accused being granted a non-custodial sentence. The probation officer recommends that the accused may be sentenced to serve two years' probation order whereby he will be guided and counselled on



the dangers of excessive consumption of alcoholic drinks and anger management subject to the court's discretion.

15. In view of the above, mitigating factors by the accused through his lawyer and considering the circumstances surrounding this case and bearing in mind the fact that the accused has saved the court's time and resources by pleading guilty to a lesser charge of Manslaughter, a non-custodial sentence would be appropriate in the circumstances.

16. **Final Orders**

1. Accused to serve probation sentence for a period of 2 years
2. Right of appeal of 14 days.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET THIS 2\*ND DAY OF MAY 2023.**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of**

**Mr. Sitienei - Court Assistant.**

**Ms. Ratemo for State.**

**Mr. Chebii for Accused.**

**Accused present.**

