



**Republic v Kipkulei (Criminal Case 21 of 2017)
[2023] KEHC 18515 (KLR) (15 June 2023) (Sentence)**

Neutral citation: [2023] KEHC 18515 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 21 OF 2017
RB NGETICH, J
JUNE 15, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

VICTOR KIMECHWA KIPKULEI ACCUSED

SENTENCE

1. The accused herein Victor Kimechwa Kipkulei, was charged with offence of murder contrary to section 203 as read together with section 204 of the Penal Code. The particulars of the charge sheet is that: On October 6, 2019 at Tirimionin village, Baringo North subcounty within Baringo county murdered Vincent Kamuren.
2. On November 14, 2019, the charge and its full particulars were read over to the accused who pleaded not guilty. On January 25, 2023, the defence counsel Mr Kipnyekwei informed the court that request was made for plea bargain in March 2022. The state counsel informed court that they had not responded to request for plea bargain. On March 28, 2023, state counsel Ms Ratemo informed court that she had spoken to victim’s family and they were agreeable to plea bargain.
3. On 27th April the court was informed that plea agreement had been reached and the matter was fixed for plea to lesser charge of manslaughter on May 24, 2023.
4. On May 24, 2023, the charge of manslaughter contrary to section 203 as read with section 204 and its full particulars was read over to the accused who pleaded guilty. The facts of the offence were explained to court by the state counsel. The accused admitted the facts and he was convicted of the offence manslaughter contrary to section 203 as read with section 204 of the Penal Code. The state counsel Ms Ratemo informed the court that the accused is a first offender.
5. The accused mitigated through his advocate Mr Kipnyekwei who stated that the accused is remorseful and the dispute arose because the deceased took accused’s mobile phone in lieu of loan of Kshs 50



which was to be paid but the deceased demanded more money than they had agreed and unfortunately the accused was drunk and he stabbed the deceased at the spur of the moment.

6. Defence counsel submitted that the death of the deceased was not premeditated and he prays for leniency; that he has pleaded guilty out of his own volition.
7. Presentence report was filed by probation officer on May 24, 2023. From the probation officer's report, the victim's family are opposed to non-custodial sentence on ground that the family are yet to come to terms with the loss and blamed the accused's family for being slow in initiating the reconciliation process. The probation officer indicated that the offender's family has not bothered to start reconciliation.
8. The local administration is also opposed to non-custodial sentence on ground that the offender has a long history of criminality which make him unfit to serve sentence within the community.
9. The maximum sentence for the offence of manslaughter is life imprisonment. I take note of the fact that the accused is a first offender and remorseful. I also take note of the fact that he has saved the court's time by pleading guilty to a lesser charge of manslaughter. However, in view of the fact that no reconciliatory effort's have been made, it may be unsafe to impose non-custodial sentence.
10. I have considered the fact that accused committed the offence while under the influence of alcohol over dispute of Kshs 50. He requires corrective measures so as to enable him change his conduct and manage anger and, in my view, custodial sentence will be appropriate to allow accused to reform. It will also serve as a lesson to other members of community to avoid overindulging in illicit brew which may lead to commission of offences or being on the wrong side of the law. I am inclined to impose lenient custodial sentence.

Final Orders

1. Accused to serve 7 years imprisonment.
2. Period served in remand to be reduced from the sentence imposed.
3. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET

THIS 15TH DAY OF JUNE 2023.

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RACHEL NGETICH

JUDGE

In the presence of:

Mr. Kemboi - Court Assistant.

Mr. Abwajo for state.

Mr. Nyaribo holding brief for Mr. Nyekwei for accused.

