



**Republic v Kitilit (Criminal Case E003 of 2022)
[2023] KEHC 18892 (KLR) (15 June 2023) (Sentence)**

Neutral citation: [2023] KEHC 18892 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E003 OF 2022
RB NGETICH, J
JUNE 15, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

JULIUS KITILIT ACCUSED

SENTENCE

1. The accused Julius Kitilit was charge with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code, the particulars of the charge being that the accused on the 12th day of February, 2022 at around 2030hours at Chebugar village, Lawan Location in Baringo North Sub-County within Baringo County murdered Simon Kitilit.
2. On the 18.05.22 the charge and its full particulars were read over and explained to accused who pleaded not guilty. Mr. Chebii counsel for the accused applied for accused to be released on bond and informed the court that the deceased is a brother to the accused and that they intend to pursue plea bargaining.
3. On the 19.04.23 when the matter came up for hearing of the prosecution case, the state counsel Ms. Ratemo informed the court that there was a request for plea bargaining by counsel for the accused which had not been considered by the prosecution. She requested for time to consider the request.
4. The plea agreement was executed by the parties on the April 26, 2023 and the charge of murder was reduced to manslaughter. The charge of manslaughter was read to the accused who pleaded guilty and was convicted accordingly under section 202 as read with section 205 of the Penal Code.

Facts Of The Offence

5. The brief facts surrounding the offence is that on the February 12, 2022 at around 8. 30p.m, the accused picked a quarrel with his young brother Simon Kitilit (the deceased) while at their home at Chebugar village over money amounting to Kshs 150 which the deceased owed the accused.



6. The accused while in company of one Jeremiah Chelangat his brother in-law arrived at the home of the deceased at around 6. 30 p.m to 7p.m to take Changaa sold by the deceased in his house. They found people drinking changaa and others who included the deceased's father Joseph Cherutich aged 86 years were arriving. Upon arrival, the accused asked the deceased to serve them with the brew worth Kshs50 and they were served. The accused then gave the deceased a note of Kshs 200 expecting to be given a balance of Kshs150.
7. Around 8:00p.m, the accused demanded his balance of Kshs150 from the deceased but the deceased refused to give him claiming the accused owed him some money which he did not state. They differed and a fight ensued; people who saw the fierce fight left the place hurriedly leaving the two fighting while the deceased's father tried to separate them.
8. The accused was overpowered and he ran towards his house which was about 300 meters from the home of the deceased; the deceased pursued him to his house. The accused locked himself in his house along with his wife Joylene Kitilit who had just given birth. The deceased kicked the door to the house breaking it then entered the house and continued beating the deceased.
9. Thereafter the accused found his way out, went to his store house, took a bow and arrows which he used to shoot the deceased on the chest. He fell down and succumbed to the injuries he sustained. The accused disappeared from the scene. Joseph Cherutich, the accused and the deceased's father reported the matter to the local area assistant chief Kaptilimwo sub-location Mr. Thomas Solei who in turn reported to Barwesa Police station where it was booked.
10. The police visited the scene and later informed the DCI Baringo who went to the scene and took over the investigations and removed the body to Baringo County Referral Hospital awaiting postmortem which was done on 18.02.22 by Dr. Mue who formed the opinion that the cause of the death was due to penetrating chest wall trauma (injury to heart) secondary to assault with sharp object.
11. The accused was traced, arrested and taken to Kabarnet police station where he was charged with the offence of murder now reduced to manslaughter.
12. On the April 26, 2023 the court ordered for pre-sentence report to be prepared by the probation officer before mitigation and the report was filed on 22.05.23.

Pre-Sentence Report

13. From the report the accused's family together with the deceased's wife prayed for the accused to be granted community rehabilitation with a promise to relocate the accused's family to avoid any conflicts that may arise
14. The local administration indicates accused's problem was excessive alcohol consumption but are not opposed to a non-custodial sentence but subject to his relocation elsewhere.
15. The prosecution informed the court that they have no previous convictions against the accused and he can be treated as a first off
16. The accused mitigated though his Advocate Mr. Chebii who submitted that the accused is a first offender, remorseful; he is married and is the sole breadwinner of his family. He submitted that the deceased chased the accused all the way to his house; that the accused would have been killed had he not acted on self defence. He prayed for a lenient sentence; a non-custodial sentence as the family will have lost 2 siblings if the accused is sentenced to a custodial sentence,



Analysis And Determination

17. Under section 205 of the [Penal Code](#) a person convicted of Manslaughter is liable to imprisonment for life. Whether the maximum or lesser penalty will however depend on circumstances of each case.
18. Record show that a fight ensued when the deceased refused to refund to the accused Kshs150 owed to the accused by him. The deceased further provoked the accused by following him to his house and continued beating him and the accused having managed to escape the rage of the deceased removed a bow and arrow and shot the deceased on the chest killing him on the spot.
19. From the foregoing, it is evident that the accused acted out of extreme provocation from his brother. The two were also under the influence of alcohol at the time the dispute between the two brothers arose; the death was not premeditated. It occurred as a result of rage and anger.
20. The accused expressed remorse through his Advocate. From presentence report, he also promises to take care of his late brother's children. The family have promised to relocate the accused to protect him from any animosity that may arise as a result of the offence herein
21. I also take note of the fact that accused is a first offender. Even though the family have committed to relocate the accused, I am of the view that the accused need to be rehabilitated to reform in terms excessive consumption of alcohol and anger management. This will best be achieved while in custody. I will however impose a lenient sentence.
22. Final orders: -
 1. Accused to serve 5 years imprisonment
 2. Period served in remand to be reduced from the sentence
 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. Mwaita - Counsel for Accused.

Accused present.

