



**Republic v Kiborus (Criminal Case E005 of 2021)  
[2024] KEHC 12762 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12762 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE E005 OF 2021  
RB NGETICH, J  
OCTOBER 17, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JOHNSTONE KIPTOO KIBORUS ..... ACCUSED**

**RULING**

1. The accused Johnstone Kiptoo Kiborus 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 were that the accused person on the 2<sup>nd</sup> day of June, 2020 at Kaptiem Village, Koriema sub-location, Kimalel location of Baringo South Sub- County within Baringo County, murdered one Solomon Cheserem Kiborus.
2. The charge was read over to the accused person who denied the charge and the trial process commenced. However, when the matter came up for hearing on the 24<sup>th</sup> October, 2022, the defence counsel Mr. Kiptoo informed the court that the accused and the deceased were relatives and they were pursuing plea bargain. In view of reconciliatory talks, the matter was fixed for mention on the 26<sup>th</sup> October, 2023 to confirm the position on plea bargain.
3. On 29<sup>th</sup> July, 2024, the accused informed the court that they had reconciled and he wished to plead to a lesser charge of manslaughter. Plea agreement was duly executed on the 24<sup>th</sup> September, 2024 where the charge was eventually reduced to manslaughter contrary to section 202 as read with section 205 of the Penal Code. Subsequently, the charge and its particulars was read over and explained to the accused person who pleaded guilty and he was convicted on their own plea of guilty.

**Brief Facts Of The Case**

4. On 2<sup>nd</sup> day of June, 2020 at around 7.00 p.m., the accused was heading home from visiting his brother Calvin Kiproop and on nearing his grandfather's homestead, he met with his younger brother the



deceased herein Solomon Cheserem Kiborus carrying a panga, a bow and arrows. While the accused was about 30 meters from the deceased, the deceased started shooting the arrows aiming at the accused. The accused run to dodge the arrows as deceased followed him. The accused decided to hide in a thicket. When the deceased got close to the accused, the accused jumped out, picked a stone and hit the deceased with it on the head. When the deceased tried to get up, the accused picked another stone and hit the deceased again. The accused then picked the panga, bow and 2 arrows from the deceased and left the deceased on the ground. He took the weapons he had obtained from the deceased to his uncle Francis Cheboi and asked him to go help the deceased.

5. The accused then went and informed his other siblings of the incident before going into hiding for fear of being attacked by members of public. The accused was arrested on the 18<sup>th</sup> of January, 2021 at Nakuru. He was interrogated on the 19<sup>th</sup> of January, 2021. He admitted the events that led to the accused's death and his statement under inquiry was recorded. Postmortem was conducted on the body of the deceased at Baringo County Referral hospital on the 8<sup>th</sup> of June, 2020. The doctor formed opinion that the cause of death was blunt force trauma to the head with concomitant compound fractures and subdural hematoma. Police file was compiled and the accused charged with the offence of murder now reduced to manslaughter following plea bargain.

### **Mitigation**

6. The defence counsel Mr. Kiptoo mitigated on behalf of the accused. He stated that from the facts of the case, it is clear that the accused acted out of extreme provocation which compelled him to commit the unfortunate offence which he regrets. He submitted that from the pre-sentence report, the family, the local administration and the community are willing to accept the accused back to the community and the only thing remaining is cleansing which is to be done upon his release. He prayed for non-custodial sentence and urged this court to consider the period the accused served in custody.
7. The prosecution counsel on her part submitted that she had gone through the pre-sentence report and have also spoken to the family of the deceased who are equally the family of the deceased and leaves the aspect of sentencing to the discretion of the court.

### **Pre-sentence Report**

8. From presentence report filed, the accused sat for KCSE in the year 2014 and attained a grade of D Plus. Since then, he begun engaging in casual labor so as to earn a living. He is single and has no children.
9. The accused's brother stated that the victim had become troublesome within the community as a result of depression due to botched relationship; that he had turned violent and would attack members of the community without provocation and cited an instance where the victim stabbed a woman he met along the path. He added that the victim was involved in house breaking and theft. He stated as a family, they would resolve the matters at home but on the material day, the victim and the offender met along a path and the victim attacked the offender without provocation; He further stated that as a family, they have resolved to forgive the offender unconditionally as they have already lost victim and they do not want to lose another one through imprisonment. The family prayed for a non-custodial sentence. The accused's uncle confirmed that the family has resolved to forgive the offender and support non-custodial sentence.
10. The offender stated that he had once reported the victim who was his brother for house breaking and it seemed the victim kept a grudge and attacked him on the material day without provocation and in the process of defending himself, he caused fatal injuries to the deceased. He regrets his action and prays for leniency from court and he has sought forgiveness from his family members. He urges court



to consider the circumstances of the offence and the fact that he is a first offender. He prays for non-custodial sentence.

11. The local administration indicated that the offender had been known to be of good conduct prior to the offence and that they were surprised when the incident occurred. The community at large is ready to welcome the offender as the family members have decided to forgive him and the local administration support a non-custodial sentence.

### **Determination**

12. Under section 205 of the Penal Code a person convicted of Manslaughter is liable to imprisonment for life, however the court in Malindi Criminal Appeal No. 12 of 2021 between Julius Kitsao Manyeso v Republic declared life imprisonment unconstitutional.
13. From the presentence report, it is clear that the deceased was the aggressor and that he provoked the accused beyond limit and in the process of defence, the accused inflicted fatal injuries to the deceased. The report indicate that the deceased was suffering from depression due to love relationship that turned sour and the deceased vent his anger on members of the community and family and was also known for criminal activities which included housebreaking and stealing. The accused indicated that the deceased may have harbored hatred towards him because accused reported him for house breaking. Looking at the circumstances of the offence and considering the sentiments of the victim's family who are also accused's family together with the local administration and also taking into consideration the fact that accused is a first offender, I am of the view that non-custodial sentence would be appropriate.
14. Final Orders:-
  1. Accused to serve 2 years' probation sentence.
  2. Right of appeal 14 days.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 17TH DAY OF OCTOBER 2024.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Elvis – Court Assistant.

Ms. Ratemo for state.

Mr. Kiptoo for accused.

Accused present.

