



**Republic v Songok (Criminal Case 17 of 2023)
[2024] KEHC 12761 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12761 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 17 OF 2023
RB NGETICH, J
OCTOBER 17, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

ESAU KIPKURUI SONGOK ACCUSED

RULING

1. The accused Esau Kipkurui Songok 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 21st day of December, 2018 at Rosoga village, Rosoga Location in Mogotio Sub- County within Baringo County murdered Naomi Jelagat Tuitoek.
2. The charge was read over to the accused person who denied and the trial process commenced. However, when the matter came up for hearing on the 16th October,2023, the defence counsel Mr. Chebii informed the court that he had gone through the statement of a son to the accused and the deceased which showed that the two families have already reconciled. The matter was then fixed for mention on the 16th November,2023 to confirm the position on plea bargain.
3. The plea agreement was duly executed on the 18th September, 2024 where the charge was reduced to manslaughter following a plea bargain agreement and thereafter the charge of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#) was read over and explained to him who pleaded guilty and was convicted on their own plea of guilty.

Brief Facts Of The Case

4. On the 21st day of December, 2018 at about 6.30 pm the deceased Naomi Jelagat Tuitoek was resting under a tree at her home at Rosoga village Rosoga Location Mogotio Sub County within Baringo county when her husband the accused herein arrived home from a drinking spree and without uttering



a word hit the deceased with a piece of wood on the head severally. Their 8-year-old son Brian Kipchirchir Kirui who was seated near the door of the main house witnessed the unfortunate incident but could not intervene as the accused threatened to attack him as well. The deceased who was bleeding profusely from the back of her head remained still and did not utter a word after the attack.

5. The accused saw one Jethro Kiprono who was passing by and asked him to assist him check the deceased while telling him he had killed his wife. They were joined by a third person and together they took the deceased to Eming Dispensary. Martin Kibet Songok who is a brother to the accused joined them at Eming Dispensary, the deceased was given first aid and referred to Eldama Ravine Sub-County Hospital for further treatment. Thereafter Martin informed the area chief David Cherono about the incident. In the night, the deceased was referred to Provincial General Hospital Nakuru for further treatment. The deceased died on 30th December 2018 while undergoing treatment at the Nakuru Provincial General Hospital.
6. The matter was reported at Mogotio Police Station on 2nd January 2019. The police officers visited the hospital and found the deceased in mortuary and on physical examination the deceased had a swollen forehead bruises on the right eye, bruises on the left leg toes and two cut wounds on the head. Postmortem was conducted by DR. Ngulungu in the presence of the relatives and a police officer. He established that the deceased died of severe head injury caused by a blunt force. The accused was arrested and charged. The police file was compiled and the accused person charged with the offence of Murder now reduced to Manslaughter upon plea agreement being entered.

Mitigation

7. The defence counsel Mr. Chebii mitigated on behalf of the accused. He submitted that the accused is remorseful and prays for a non-custodial sentence. That he is the bread winner of his children who stay with him since the demise of the wife. Counsel submitted that the death was unfortunate as the accused was trying to discipline his wife who had neglected the child. That the 2 families have since met and reconciled and compensation done as per the culture and the two families are living peacefully and they pray for a non-custodial sentence.
8. The prosecution counsel Ms. Omari submitted that the pre-sentence report is favourable to the accused. She however submitted that the family of the deceased are still bitter with the accused but have forgiven him for the sake of the children saying that he was taking good care of the children before the incident and urge this court for leniency so that he can take care of the children though they are still bitter.

Pre-sentence Report

9. From the report, the accused person is a son to the late Kipsongok Chepyegon and Veronicah Kipsongok who are residence of Rosoga Village. The family practice mixed farming to earn a living. The accused is in close ties with his two siblings who have been supporting him and his children both emotional and financially. There is no history of criminality within the family.
10. The accused was born in the year 1984 at Rosoga village, in Rosoga Location. He dropped out of school in form two citing financial challenges. He has since been practicing farming as well as doing casual labor to earn a living an activity he has been doing up to the time of his arrest with the offence herein. He is married with 4 children.
11. The accused person admits the charges and says that on that material day, his wife went home while drunk and started abusing him; this angered him and without a thought he hit her with a stick. He further added that, it was after a while that he realized that the stick had seriously injured the deceased



and he decided to rush her to Mogotio hospital and on reaching there, he was told to take her to Nakuru General Hospital. The accused indicated that after a few days in Hospital, his wife was pronounced dead leading to his arrest and the charge herein. He prays to the court for leniency. He states that he did not intend to kill the mother of his children but he had acted out of furious anger and he regrets his action which he attributes to his state of being drunk.

12. The victim's family stated that the death of their daughter devastated them. They indicated that despite the accused being an alcoholic, he had always supported his children. They further stated that although the two often had disagreements which at times led to fights, they did not expect it would one day lead to the death of their daughter. The victim's mother and brother are still very bitter with the accused and if not for the welfare of the children, they would have proposed he be jailed for life. They confirmed that the accused's family and relatives had sought forgiveness from their family and reconciliation efforts are still ongoing and they hope to conclude reconciliation process.
13. The accused's Family attribute the accused's action to overindulgence in alcohol and confirmed that they have reached out to the victim's family through community elders who went to apologize on their behalf and stated that reconciliation meetings were held between the two families and they agreed that it would be in the best interest of the children to forgive the accused so that he can go and take care of his children. They prayed for a non-custodial sentence so as to ensure the process of reconciliation and other cleansing rituals is completed especially that which touches on the accused person.
14. The area administrators and the village elders indicated that the accused has not been involved in any criminal acts within the community; that they have known the accused as a hardworking man within his community and the accused and the victim have been married for a long time and though there had been incidences of quarrels between them, none had reached their office for resolution since they could reconcile themselves.
15. The administrators also shared that the family of the accused involved them in forging a way forward towards reconciliation and also the children's care, protection and upkeep. They attributed the incident to intoxication in alcohol and built-up anger; they prayed for a lenient sentence.
16. The probation officer's opinion is that the home environment is conducive for re-integration of the accused person.

DETERMINATION

17. 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 vs Republic* declared life imprisonment unconstitutional.
18. I have considered sentiments given by the deceased's family, local administration and accused's family. The family of the deceased are still bitter but they have been motivated by the interest of accused's children to agree to non-injuries inflicted by their father who is accused herein and the family of the deceased are sympathetic to the children and are of the view that if accused is placed on non-custodial sentence, he will take care of his children. Reconciliation process has not been concluded.
19. The accused herein is a first offender and he is remorseful and regrets the offence. From social inquiry report, the accused and deceased who were husband and wife had frequent quarrels due to alcoholism but they would reconcile. In the incident herein, the accused who was drunk went overboard by inflicting fatal injuries to his wife who was also drunk. Accused deprived his children the care and love of a mother. By confinement, his children are again denied fatherly love and care.



20. In view of the above and considering the fact that accused is a first offender and is remorseful, I am inclined to impose 10 years imprisonment which in my view will held the accused refrain from alcohol abuse and learn anger management.
21. Final Orders:-
 1. Accused to serve 10 years imprisonment.
 2. Period served in remand to be computed in the sentence.
 3. 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:

Karanja – Court Assistant.

Ms. Omari for State.

Accused present.

Mr. Chebii for accused absent.

