



**Republic v Toroitich & another (Criminal Case E007 of 2024)  
[2024] KEHC 12712 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12712 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE E007 OF 2024  
RB NGETICH, J  
OCTOBER 17, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**HANNAH TALAI TOROITICH ..... 1<sup>ST</sup> ACCUSED**

**ALEX KIGEN KIPELGO ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The accused Hannah Talai Toroitich and Alex Kigen Kipelgo 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 persons on the 10<sup>th</sup> day of June, 2024 at Kaplop village, Timboiywo sub-location, Kabasis Location in Baringo Central Sub-County within Baringo County, murdered one Evans Kandagor Kipchumba.
2. The charge was read over to the accused persons who denied the charge and the trial process commenced. On the 9<sup>th</sup> July, 2024 when accused persons appeared before court for plea, the prosecution counsel Ms. Ratemo informed the court that they had already supplied the defence with the committal bundles and they were to call four witnesses but she was aware that negotiations were ongoing.
3. On the 30<sup>th</sup> July, 2024, the prosecution informed the court that parties negotiated and that they were given a copy of the minutes indicating that they reconciled. The plea agreement was duly executed on the said date 30<sup>th</sup> July, 2024 where the charge was eventually reduced to manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. The charge and its full particulars were read accused persons who pleaded guilty and were convicted on their own plea of guilty.



## **Brief Facts of the Case**

4. On 10<sup>th</sup> June, 2024 at around 1915 hrs at Kaplop village, Timboiywo Sub-location Kabasis location within Baringo central, a murder case was reported at Sacho police station by the area assistant chief vide OB NO.10/06/2024 at around 2250hrs. It was reported that the deceased Evans Kandagor Kipchumba a male adult aged 29 years old went to the homestead of David Kipfelgo Kutto and confronted his wife namely Annah Talai Toroitich while armed with Panga and without even quarrelling or uttering any word to the victim he assaulted her by inflicting her with injuries on the head amputating her left-hand thumb.
5. The deceased also wanted to attack Accused1's husband Mr. David Kipfelgo but fortunately he managed to evade the Panga where he was also saved by his son Alex Kigen Kipfelgo accused2 herein who arrived after hearing the screams from his mother.
6. Accused 2 got hold of the deceased who could not let go of the Panga in his hands. He squeezed the deceased harder which forced the deceased to drop the panga. David used the opportunity to take the panga to the house which was stained with Hannah's blood. During the struggle, Hannah Talai Toroitich hit the deceased using a thick piece of fire wood on the head. Blood started oozing out of the deceased's head. Accused 2 then asked his mother to get a rope and he tied the deceased's hands.
7. Accused 2 called the area assistant chief who then informed the police. After tying up the deceased, Accused2 rushed his mother to Baringo County Referral hospital where she was admitted under serious condition. By the time the officers arrived at the scene, the deceased had already passed on due physical head injury caused by the blunt object. The police then took the Panga and stick which were kept as exhibits.
8. During investigation, it was determined that the deceased had mental challenges as admitted by his father, Philip Kipchumba which led to him dropping out of technical university in the year 2017 while in second year.
9. The police file was compiled and the accused charged with the offence of murder. By virtue of the fact that the deceased and the accused persons are related their families had a reconciliatory meeting on the 13<sup>th</sup> of July, 2014 and the charge reduced to manslaughter upon request for plea bargain.

## **Mitigation**

10. The defence counsel Ms. Mokoit mitigated on behalf of the accused persons. she submitted that they align themselves with the report of the local administration and the family and pray for a non-custodial sentence and for the period the accused persons served in remand to be considered. They submit that they were yet to conclude traditional rituals of cleansing and both families were ready to conclude once they reach home.
11. The prosecution counsel submitted that in light of the circumstances that the deceased had chosen to attack A1 leading to her losing a finger on the right hand and owing to her old age, she was aided by A2 who is her son and the fact that the deceased had mental illness and was yet to be treated, they left the aspect of sentencing to the court.



## **Pre-sentence Report**

### **1<sup>st</sup> Accused pre-sentence Report**

12. From the report, the offender is 64 years old and had formal education up to class 3 when she dropped out in her own accord. After dropping out of school she engaged in casual labor. She is married with 8 children. The family relies on farming and odd jobs so as to sustain themselves.
13. The husband of the offender indicated the victim was his brother's son. He further stated that the victim attacked accused1 with a panga without provocation and Accused 1 was simply defending herself and in the process the victim sustained injuries which led to his death. As a family they had approached the family of the victim, village elders were involved and the 2 families were reconciled. They prayed for a non-custodial sentence so that Accused 1 can continue with her parental and matrimonial duties.
14. The offender expresses regret over the offence indicating that she did not wish to harm the victim in any way, only that the victim attacked her without provocation and when she saw that the situation is serious, she had to act to save her life. Although her actions were out of self-defense, she regrets the death of the victim and seeks forgiveness from the family of the victim. She prayed for a non-custodial sentence so that she can continue with her duties in her home.
15. The family of the victim indicated that they had a reconciliatory meeting with the family of Accused 1 and they resolved to forgive the offender. The two families agreed on 1 cow and 2 goats as compensation and they all agreed that they support Accused 1 to be released to serve a non-custodial sentence. They attached minutes of the meeting.
16. The local administration gave the sentiments of the community. They indicated that since reconciliation talks were done and the community members are aware, the community members at large have no problem with the offenders and are not oppose to them serving a non-custodial sentence. They further added that the two accused persons are of good conduct and they do not understand why the victim walked over 5 kilometers to go and attack the offender without provocation. They recommended that the two accused persons serve a non-custodial sentence to foster peace and further reconciliation between the two families and to enable the accused persons to resume their duties in the family and the community.

### **2<sup>nd</sup> Accused pre-sentence Report**

17. From the report, accused 2 is 27 years old. He had formal education up to form 3 at Timboyo secondary school in the year 2017 when he dropped out on his own volition. Since then, he has been engaging in casual labor and farming so as to earn a living. He is married with one child. Sentiments given by family of victim, accused's family and local administration are as captured under Accused1 above.

## **Determination**

18. 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.
19. I have considered sentiments by victim's family and the local administration; I have also considered the fact that accused 1 and 2 are remorseful and regret the events that led to loss of their nephew and cousins respectively. From the presentence report, the deceased had mental illness and he attacked the



1<sup>st</sup> accused without provocation; that the 1<sup>st</sup> accused acted in self defence and in the process hit the deceased and the 2<sup>nd</sup> accused joined in to rescue the 1<sup>st</sup> accused from the deceased who was the fierce aggressor. the prosecution confirmed that the 1<sup>st</sup> accused lost a finger of her right hand in the process of the attack by the deceased. It is clear that the two accused persons did not intend to cause harm to the deceased but they inflicted injury on him as they defended themselves from the fierce attack by the deceased.

20. From the report, the victim's and accused's family have reconciled and are living peacefully. From the foregoing I find non-custodial sentence appropriated in the circumstances.

21. Final orders:-

Each accused to serve probation sentence for a period of 3 years

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

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Elvis – Court Assistant.

Ms. Ratemo for State.

Ms. Mokoit for accused.

Accused 1 present.

Accused 2 present.

