



**Republic v Koech (Criminal Case E009 of 2020)
[2024] KEHC 12835 (KLR) (16 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12835 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE E009 OF 2020
RL KORIR, J
OCTOBER 16, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

NEHEMIAH KIPNGETICH KOECH ALIAS STAMINA ACCUSED

JUDGMENT

1. Nehemiah Kipngetich Koech alias Stamina was charged with the offence of murder contrary to Section 203 as read with 204 of the *Penal Code*. The particulars are that on the 17th day of December 2020 at about 1900 hours at Olingoswet village in Kapkimo Location within Bomet County murdered Joseph Kipkoech Tonui.
2. He was arraigned for plea on 9th February 2021 and he denied the charge. The trial commenced on 2nd November, 2022 and after the testimony of one witness, defence counsel informed the court that the Accused wished to plea bargain with the State. The trial was consequently adjourned to enable parties pursue a Plea Agreement.
3. The Plea negotiations dragged and on 26th July, 2023, the Accused informed the court that he did not wish to proceed with the plea negotiations. When the case came up for trial on 27th November, 2023, the Accused yet again indicated that he did not wish to proceed with the trial. Parties subsequently filed a Plea Agreement dated 25th October, 2023.
4. This Court subjected the Accused to an extensive inquiry to establish whether or not he understood his trial rights and that he had voluntarily plea bargained his charge with the State Prosecutor. The court accepted the Plea Agreement upon being satisfied that the Accused had voluntarily plea bargained.



5. On 27th November, 2023, Accused pleaded guilty to the charge of manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#). The facts were read by the prosecutor as follows:-

“The facts about this case are that on 17th December, 2020 at about 1900 hours at Olingoswet village in Kapkimolwo location within Bomet County, the deceased herein Joseph Kipkoech Tonui was at home together with other members of his family.

An argument arose between the deceased and other family members regarding the returns from the sale of milk and issue of payment of dowry of the deceased’s daughter. The deceased became annoyed. He threatened to kill one of his sons by the name Shadrack Kibet Koech. He also threatened to burn motorcycle with petrol. The other family members tried to calm him down but they could not succeed. The deceased was armed with a bolt headed rungu.

One of the deceased’s sons by the name of Nehemia Kingetich Koech alias Stamina (accused) who was not at home when the argument arose, arrived at home. He armed himself with a wooden stick (jembe handle). He then hit the deceased on the head above the left ear. This occasioned massive bleeding and the deceased fell down unconsciously. The deceased was then rushed to Longisa hospital but the doctors were on strike. He was then taken to Tenwek hospital where he died while undergoing treatment. The postmortem was carried out at Longisa County hospital and the doctor was of the opinion that the deceased had died as a result of excessive internal brain bleeding after being hit with a blunt object. The wooden stick which the accused used to hit the deceased was recovered.

The accused was arrested and was taken to Silibwet Police station and later Longisa Police station. His mental status report indicates that he is fit to stand trial”.

6. The Accused accepted the facts as true and was consequently convicted on his own guilty plea for the offence of manslaughter.
7. At the sentencing hearing defence counsel mitigated on behalf of the Accused as follows that on the material date the Accused responded to threats by the father that he would kill somebody. That the Accused quickly rushed his father to Longisa and subsequently Tenwek hospital in an effort to save his life. Counsel submitted that the Accused had reformed while in pre-trial custody where he had received religious training from prison church ministries and had been baptised and even qualified as a pastor. That he was a first offender and desired to repair the harm he had caused and that his mother had forgiven him.
8. The Accused addressed the court directly and stated that he was 26 years old and married with two children aged 7 and 4 years respectively. He said that he admitted having hit the father and that he regretted his action.
9. The Accused handed in further 5 pages of hand written submissions. In his home made written mitigation, the Accused narrated the events of the material date showing that he hit his father unintentionally and the efforts he made to rush him to hospital. He submitted that his young family and his mother and younger siblings who were hitherto dependant on him were suffering. He prayed for a second chance to go and take care of them.
10. The Accused also submitted that the pre-trial remand had fully rehabilitated him to understand that crime does not pay and had also made him discover salvation. That given a second chance he would counsel the community against crime and preach. He attached numerous commendation letters and certificates from the prison church ministries and payed for a non-custodial sentence.



11. The mother of the Accused being the primary victim of the offence also addressed the court and stated that she had forgiven the Accused. The court granted her audience in accordance with the [Victim Protection Act](#).
12. Defence counsel Mr. Kadet filed written submissions in mitigation dated 19th May, 2024. He submitted that the Accused was remorseful and had saved judicial time by plea-bargaining. Counsel submitted that had the case gone to trial the evidence would have shown that the Accused was a victim of circumstances as the father (deceased) beat up and threatened to burn his children which caused the Accused to intervene by hitting the deceased. It was his further submission that there were other mitigating factors including the fact that the Accused had received positive recommendation from the Bomet and Kericho remand and certificates relevant to christian teaching.
12. Counsel prayed for a non-custodial sentence on the basis that the Accused was remorseful, was already rehabilitated in pre-trial custody and was a first offender and his family was willing to have him back home. He relied on [Republic v Ezekiel Lokatukon](#) [2021] eKLR.
13. Sentencing serves multiple purposes. The [Sentencing Policy Guidelines 2023](#) outlines the objectives of sentencing at paragraph 1.3.1 as follows:-

Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other- in so far as possible, sentences imposed should be geared towards meeting the objectives in totality.

 - i. Retribution.
 - ii. Deterrence.
 - iii. Rehabilitation.
 - iv. Restorative justice.
 - v. Community Protection.
 - vi. Denunciation.
 - vii. Reconciliation.
 - viii. Reintegration.
14. These purposes are not exclusive and their application is dependant on the individual circumstance of a case.
15. Factors to be considered in sentencing were set out by the Supreme Court of [Francis Karioko Muruatetu & another v Republic](#) (2017) eKLR where it stated:-

“In re-hearing sentence for the charge of murder, both aggravating and mitigating factors such as the following, will guide the court;

 - (a) Age of the offender;
 - (b) Being a first offender;
 - (c) Whether the offender pleaded guilty;
 - (d) Character and record of the offender;
 - (e) Commission of the offence in response to gender-based violence;



- (f) The manner in which the offence was committed on the victim;
- (g) The physical and psychological effect of the offence on the victim's family;
- (h) Remorsefulness of the offender;
- (i) The possibility of reform and social re-adaptation of the offender;
- (j) Any other factor that the court considers relevant.

Where the appellant has lodged an appeal against sentence alone, the appellate court will proceed to receive submissions on re-sentencing.

These guidelines will be followed by the High Court and the Court of Appeal in ongoing murder trials and appeals. They will also apply to sentences imposed under section 204 of the [Penal Code](#) before the decision in Muruatetu.”

16. The undisputed facts in this case are that the Accused responded to a fight between his father and brothers one Shadrack Kibet Koech and other family members. The Accused took a wooden jembe handle and hit his father on the head fatally wounding him.
 17. The pre- sentence probation report filed on 6th December, 2024 paints the Accused in positive light as a hitherto hard working and responsible family man with no anti-social traits. The report stated that the Accused was not the aggressor and that the family members who were also the victims had forgiven him and prayed for his release so as to undertake traditional cleansing and reconciliation.
 18. From the extensive submissions on mitigation and the pre-sentence probation officer's report, it was clear that the Accused was remorseful, was a progressive and social member of society and had the support of his family and community for a non-custodial sentence. Further, there was a clear supportive structure for rehabilitation and reintegration. It was clear from the numerous testimonials from prison that the Accused had benefited from prison rehabilitation during his long pre-trial custody. And these are strong mitigating factors.
 19. It was also clear to this court that the victims being both the Accuseds' and deceaseds' family members were content to treat the murder case as a family issue for them to resolve at home. Manslaughter is however a serious felony punishable by a maximum sentence of life imprisonment under Section 205 of the [Penal Code](#). While this court believes that the Accused has truly reformed while in prison, and has been forgiven by his family, this court also believes that no one should get away with the killing of their parent. A custodial sentence would in this case, send the correct message.
 20. I have considered that the Accused has been in pre-trial custody for 4 years now.
 21. The Accused is sentenced to serve 1 year imprisonment from today.
- Orders accordingly.

JUDGMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 16TH DAY OF OCTOBER 2024

R.LAGAT-KORIR

JUDGE

In the presence of Mr. Waweru holding brief for Mr. Njeru for the State, Ms. Chirchir holding brief for Mr. Kadet for the Accused and Siele (Court Assistant)

