



**Republic v Tonui (Criminal Case E006 of 2022)  
[2024] KEHC 12467 (KLR) (16 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12467 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CRIMINAL CASE E006 OF 2022  
RL KORIR, J  
OCTOBER 16, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**BENARD KIBET TONUUI ..... ACCUSED**

**JUDGMENT**

1. The Accused, Benard Kibet Tonui was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence were that on 28th March 2022 at Siongiroi Location in Chepalungu Sub-County within Bomet County, he murdered Julius Kiprotich Korir.
2. The Accused took plea on 27th April 2022 and pleaded not guilty to the offence.
3. On 6th December 2022, the Accused’s parents appeared in court and asked the court to forgive the Accused who was their son. Defence counsel also informed the court that the Accused wished to plea bargain.
4. A duly executed Plea Bargaining Agreement dated 22nd March 2023 was filed in court and it indicated that the Accused had agreed to plead guilty to the lesser offence of manslaughter.
5. On 24th October 2023, this court accepted the Plea Agreement after interviewing the Accused and satisfying itself that he executed the Plea Agreement voluntarily.
6. On the same day (24th October 2023), the Accused took plea for the offence of manslaughter. The charge and every element thereof was read and explained to him in the Kipsigis language which he understood and he pleaded guilty. The court entered a plea of guilty for the offence of manslaughter.



7. The facts as read by the Prosecutor and captured in the Plea Agreement are as follows:-

“On the material day, the Accused person was having changaa at the deceased’s house together with some other people. This was around 2200 hours. The deceased Julius Kiprotich Korir arrived and ordered everyone to leave his house since he wanted to sleep. The Accused then told the people present not to leave since he would deal with his younger brother.

The Accused person then drew a knife from his waist and went inside the house where the deceased was sleeping. A few minutes later, the deceased was heard screaming and on checking up on him, blood was oozing from his upper right thigh. The deceased was then taken to Siongiroi health center but was pronounced dead on arrival.

On 29th March 2022, the Accused herein was arrested and later arraigned in court with the charge of murder and which offence has now commuted to a charge of manslaughter.”

8. The Accused accepted the facts as true and the court convicted him on his own guilty plea for the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code.

### **Pre-Sentence Report**

9. The report stated that the offence involved and affected members of the same family as the Accused and the deceased were brothers. That the Accused was repentant and regretted the offence as he had no intention of killing the deceased. The Accused asked this court for leniency.

10. The report stated that his family had forgiven him and asked this court to grant the Accused a lenient sentence. The community regarded the Accused as a responsible person and blamed the commission of the offence on peer influence and alcoholism. That the Accused did not have any criminal history. They asked this court to consider granting the Accused a non-custodial sentence.

### **Victim Impact Statement.**

11. The Probation Officer documented that the victim’s wife supported the Accused’s parents’ decision on forgiveness for the sake of peace and to maintain good relationships within the family. That the family members had resolved to support the children born to her and the deceased as well as the children of the accused, for them to attain proper education and to cater for their general welfare.

### **Accused’s Mitigation**

12. Mitigation by the Accused was made on his behalf by her counsel, Ms. Chemutai. Counsel submitted that the Accused was remorseful for causing the death of the deceased. That he had sought reconciliation and asked for a probation sentence to enable him complete the traditional cleansing rituals. She further submitted that the Accused’s family had forgiven him.

13. It was counsel’s submission that the court considers the time the Accused had already spent in remand.

14. The Accused was invited to address the court in person and he admitted to committing the offence. That it was not his will that he committed the offence.

### **Submissions by the State**

15. Mr. Njeru, the learned Prosecution Counsel submitted that the Accused had saved the court’s time by plea bargaining. That the Accused was inebriated and there was a tendency in this jurisdiction for



persons to abuse alcohol and then commit offences such as killing. He further submitted that the court grants the Accused an appropriate custodial sentence.

16. Sentencing serves multiple purposes as enumerated in the Sentencing Policy Guidelines 2023 which outline 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.

17. The penal section for the offence of manslaughter is contained in section 205 of the Penal Code which provides:-

Any person who commits the felony of manslaughter is liable to imprisonment for life.

18. I have considered the circumstances of the case. The Accused and the deceased (who were brothers) were drinking changaa at the deceased's house and they soon got into an altercation. The Accused attacked the deceased with a knife and cut the deceased fatally on his upper right thigh.

19. I have also considered the Accused's mitigation that he was remorseful and regretted the killing of his brother. This court appreciates the fact that this was an offence committed between two family members and that the family and the victim's wife had resolved to forgive the Accused. I have also noted that the family wanted the Accused to be given a non-custodial sentence while the Prosecution called for a custodial sentence.

20. The Sentencing Policy Guidelines 2023 at paragraph 2.3.15 lists the factors that a court should consider when deciding to impose a custodial or non-custodial sentence. They are as follows:-

- i. Gravity of the offence: In the absence of aggravating circumstances, or any other circumstance that renders a non-custodial sentence unsuitable, a sentence of imprisonment should be avoided with respect to sentences that have been adjudged as deserving less than three (3) years.
- ii. Criminal history of the offender: Taking into account the seriousness of the offence, first offenders should be considered for non-custodial sentences except where the seriousness of the offence crosses the custody threshold (where the offence is so serious that neither a fine or community sentence can be justified).
- iii. ....
- iv. Conduct of the offender: Non-custodial sentences are best suited for offenders who are already remorseful and receptive to rehabilitative measures.



- v. Protection of the community: Where there is evidence that the offender is likely to pose a threat to the community, a custodial sentence may be more appropriate. The probation officer's reports should inform the court of the risk posed by the offender to the community in order to inform sentencing.
  - vi. Offender's responsibility to third parties: Where committing an offender to a custodial sentence is likely to unduly prejudice others, particularly vulnerable persons who depend on them, a court should consider if, in light of the nature and seriousness of the offence, the objectives of sentencing can be met with a non-custodial sentence. The court should enquire into the offender's personal circumstances and, where appropriate, seek the assistance of a pre-sentence report.
21. I have paid due regard to the Accused's mitigation against the factors listed above. It is my finding that the circumstances of the case and the nature of the deceased's death warranted the Accused to serve a custodial sentence. A custodial sentence will serve as a deterrence to the growing and now common trend of persons committing offences after indulging in and abusing alcohol in order to hide behind its effects. The Accused will however be spared from the maximum sentence for manslaughter which is death.
22. The Accused has been in pre-trial custody since April 2022 a period of 2 ½ years which I have taken into consideration in computing the final sentence. I have also considered that the family had already forgiven him and reconciled.
23. In the end, the Accused, Benard Kibet Tonui is sentenced to serve 3 years imprisonment from today.
24. Having plea bargained he has a right of appeal against sentence only.

**JUDGEMENT DELIVERED, DATED AND SIGNED THIS 16TH DAY OF OCTOBER 2024.**

**R. LAGAT-KORIR**

**JUDGE**

Judgement delivered in the presence of Mr. Waweru holding brief for Mr. Njeru for the State and Ms. Chemutai for the Accused and Siele (Court Assistant).

