



**Republic v Kipkemoi (Criminal Case E008 of 2020)
[2024] KEHC 14450 (KLR) (20 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14450 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE E008 OF 2020**

RL KORIR, J

NOVEMBER 20, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

DAVID KIPKEMOI ALIAS KIPKOMBICH ACCUSED

JUDGMENT

1. The Accused, David Kipkemoi alias Kipkombich 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 16th December 2020 at about 00300 hours at Busieni Village in Chemaner Location within Bomet County, he murdered Joseph Kipkemoi Sitienei.
2. The Accused took plea on 9th February 2021 where he pleaded not guilty to the charge of murder.
3. The Prosecution called its first witness, Winnie Chepkemoi who testified as PW1 on 21st November 2022. After she finished her testimony, the Accused’s counsel informed the court that the Accused wished to plea bargain with the State. The court adjourned the trial and granted the parties time to enter into plea negotiations.
4. A Plea Bargaining Agreement dated 22nd July 2024 was filed in court on 22nd July 2024. It indicated that the Accused had agreed to plead guilty to the lesser offence of manslaughter.
5. On 23rd July 2024, this court accepted the Plea Agreement after interviewing the Accused and satisfying itself that he had executed the Plea Agreement voluntarily.
6. The Accused took plea for the offence of manslaughter on 25th July 2024. The charge and every element thereof was read and explained to him in the Kipsigis language which he understood and he pleaded guilty.



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

“On 16/12/2020, the Accused, David Kipkemoi Kirinyet alias Kipkombich at Busieni Village in Bomet East Sub-County in Bomet County murdered Joseph Kipkemoi Sitienei.

On the material date, the Accused, David Kipkemoi Kirinyet alias Kipkombich accosted the deceased, Joseph Kipkemoi Sitienei and asked him to introduce himself and asked him what he was doing at that time of the night.

The deceased replied that he was passing by when he heard people talking and thought that something was wrong with his children and he came to check on them.

For no apparent reason, the Accused held the deceased by the neck and slapped the deceased person who fell down.

The Accused started hitting the deceased with a bolted rungu on the waist continuously. Efforts by the villagers to intervene were fruitless because the Accused chased them away.

The Accused stopped the beatings and the deceased was found lying dead at 0630 hours.

On 16th December 2020, the Accused herein was arrested and later arraigned in court with the charge of murder and which offence has not 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. The court further scheduled a sentencing hearing and called for a pre-sentence social inquiry report. A pre-sentence probation officer's report dated 14th August 2024 was filed on 15th August 2024.
9. The report described the circumstances of the offence as well as the views of the Accused's family and community. That the deceased and the Accused were friends and relatives by marriage who engaged in illicit brewing business. The report stated that as a result of the business rivalry between them, they begun to harbour ill feelings towards each other. The ill feelings came to a head when the victim went to his wife's home in the dead of the night demanding for the return of his wife. This led to a scuffle with the Accused who took offence with the victim's late night visit to his in-laws home. The scuffle generated to a fight and the Accused fatally injured the victim.
10. The report stated that the Accused took responsibility for his actions and regretted his actions. He asked this court for leniency and a non-custodial sentence so that he could get an opportunity to make amends and apologize to the victim's family.
11. According to the probation officer, the community was apprehensive about the Accused being released on non-custodial terms. That he had previously attacked an Assistant Chief of Kichutmo Sub-Location with a panga. That he was aggressive and lacked respect for the authorities.
12. The Probation Officer stated that the Accused was not suitable for community based rehabilitation.
13. The Probation report contained a Victim Impact Statement which showed that the deceased's wife was still pained to the loss of her husband and was yet to heal. The victim's family stated that they were dissatisfied with how the Accused's family was handling the reconciliation process. They were against the release of the Accused on a non-custodial sentence.
14. Mitigation by the Accused was made on his behalf by his counsel, Mr. Leteipa. Counsel submitted that the Accused had been in custody since his arrest and had since transformed. That the dispute was over the brewing business which led to a fall out between the Accused and the victim.



15. It was counsel's submission that at the time of the commission of the offence, the Accused had indulged heavily in alcohol but had now reformed. It was his further submission that the Accused had saved the court's time by plea bargaining. That the court should take into account the mitigating factors and impose a non-custodial sentence. Counsel urged the court to disregard the Accused's antecedents stated in the probation report stating that the same were not true and factual.
16. When the Accused was invited to address the court on any mitigating circumstances, he said that he had nothing to add.
17. Mr. Njeru, the learned Prosecution Counsel submitted that the Accused had saved judicial time and state resources. That this court should consider the time the Accused had spent in custody and that he was a 1st offender.
18. It was Counsel's submission that the court should impose a custodial and deterrent sentence as the offence was aggravated. That the Accused attacked the deceased for no apparent reason and chased away member of the public who had come to the deceased's rescue hence aggravating the offence. It was his further submission that the Pre-Sentence Report was not favorable to the Accused who was said to be given to violent tendencies. That the Accused had once attacked the local chief.
19. 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.
20. 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.
21. I have considered the circumstances of the case. The Accused and the deceased were said to be engaged in an illicit brewing business and a business rivalry emanated from the sale of their respective brews. The bad blood between the Accused and the deceased came to a head when the deceased visited his wife's relative's home late at night demanding for the return of his wife. A fight ensued between the Accused and the deceased and the Accused fatally injured the deceased using bolted rungu.
22. I have also considered the Pre-Sentence Report and the Accused's mitigation that he was remorseful and regretted the event. I have also noted that the victim's family were still aggrieved and pained by the



deceased' death and were dissatisfied with the conduct of the Accused's family during the negotiation process. The victim's family were against the release of the Accused on a non-custodial sentence.

23. 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.
24. In the final analysis, having considered the circumstances of the case, the Accused's Mitigation, the Pre-Sentence Report, the Victim Impact Statement, it is my finding that the Accused did not deserve a non-custodial sentence. He should serve a custodial and deterrent sentence in view of the circumstances of the case and the fact that he was a repeat offender. He will however be spared from the maximum sentence which was life imprisonment.
25. In the end, the Accused is sentenced to serve 10 years' imprisonment. By virtue of section 333(2) of the Criminal Procedure Code, the sentence shall be deemed to run from 23rd December 2020 being the date of his first arraignment.
26. The Accused having plea bargained has a right of appeal against sentence only.

Orders accordingly

JUDGEMENT DELIVERED, DATED AND SIGNED THIS 20TH DAY OF NOVEMBER, 2024.

R. LAGAT-KORIR

JUDGE

Judgement delivered in the presence of the Accused, Mr. Njeru for the State, Mr. Kenduiwo holding brief for Mr. Leteipa for the Accused and Siele (Court Assistant).

