



REPUBLIC OF KENYA



**Republic v Koech (Criminal Case 18 of 2019)
[2024] KEHC 16878 (KLR) (20 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 16878 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE 18 OF 2019
RL KORIR, J
NOVEMBER 20, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

BONIFACE KIBET KOECH ACCUSED

JUDGMENT

1. The Accused, Boniface Kibet Koech 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 1st August 2019 at Sotik Sub-County within Bomet County he murdered Aron Kipkoech Rotich.
2. The Accused took plea before this court (Dulu J.) on 17th September 2019 where he pleaded not guilty to the charge of murder.
3. On 8th April 2024, Mr. Njeru, learned Prosecution Counsel informed the court that they had received a plea offer. The Plea Bargaining Agreement was filed on 8th April 2024 and it indicated that the Accused had agreed to plead guilty to the lesser offence of manslaughter.
4. On 11th April 2024, this court accepted the Plea Agreement after interviewing the Accused and satisfying itself that she executed the Plea Agreement voluntarily and that he understood his trial rights.
5. On the same day (11th April 2024), 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.
6. The Facts as read by the Prosecutor and captured in the Plea Agreement are as follows:-

“On the night of 31st July 2019, one Hillary Kipsang Ruto hired the Accused, Boniface Kibet Koech a boda boda rider to ferry him to Sotik town.



When they arrived at the stage, a disagreement arose between them over the fare. They started quarrelling attracting other riders some of whom reprimanded the Accused for overcharging the customer.

Among the crowd was the deceased Aron Kipkoech Rotich who slapped the Accused. In return, the Accused picked a stone and viciously hit the deceased on the head inflicting a serious injury.

The deceased was rushed to hospital where he succumbed to the injury.

The cause of death was established to be severe head injury secondary to assault.

The Prosecution accepts that:-

- i. The initial quarrel was between the Accused and Hillary Kipsang.
- ii. The deceased joined the fray, assaulted the Accused upon which the Accused hit him with a stone.
- iii. The assault was in the heat of the moment and was not pre-meditated.

The Accused accepts these facts and may be convicted for the offence of manslaughter.

7. The Accused accepted the facts as true and was convicted 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 probation officer's report.

Pre-Sentence Report

8. A pre-sentence probation report was filed on 18th October 2024 was filed following the court's direction. The report stated that the Accused regretted his actions and was remorseful. That he had learnt a lot since he was arrested and promised to be an ambassador of peace if he was released back to the society. According to the report, the Accused asked this court for a non-custodial sentence so that he could attend to his young family and further foster reconciliation.
9. The report stated that the community did not object to the Accused being handed a non-custodial sentence. The report further stated that the community vouched for the Accused as he did not have a criminal record. The Assistant Chief stated that the families of the Accused and the deceased were engaged in reconciliation. The probation officer reported that the families had concluded traditional reconciliation and cleansing rights including compensation and were now living harmoniously.
10. The Probation Officer recommended that the Accused was suitable for Probation sentence of three years.

Victim Impact Statement

11. According to the report, the victim's mother stated that she was psychologically and emotionally affected by the death of her son. She however acknowledged that the Accused's family had sought forgiveness and an amicable solution was reached between the two families. She further acknowledged that the Accused's family had compensated them and they had no problem with the Accused being granted a non-custodial sentence. This position was also shared by the deceased's brother.



Accused's Mitigation

12. Mitigation by the Accused was made on his behalf by his counsel, Mr. Kipngetich. Counsel submitted that the incident was not intentional and that it was unfortunate that a life had been lost. Counsel further submitted that the Accused was remorseful and regretted committing the offence. Counsel prayed that the court treats the Accused with leniency.
13. It was Counsel's submission that the Accused was the bread winner of his family, was of good character and that while on bond, he interacted well with the community. It was Counsel's further submission that the families of the Accused and the deceased had done reconciliation.
14. Counsel asked this court to grant the Accused a non-custodial sentence.

Submissions by the State

15. Mr. Njeru, the learned Prosecution Counsel submitted that the Accused had saved State resources and judicial time by plea bargaining. Counsel submitted that the deceased was the aggressor but the loss of life was not warranted. He asked this court to consider that the Accused had committed a serious offence and impose a custodial sentence. Counsel further submitted that the Accused was a first offender.
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 who was a boda boda rider got into a dispute with a customer Hillary Kipsang Ruto over the amount of fare that he was to be paid. In the ensuing argument, the deceased got into a scuffle with the Accused and slapped the Accused across his face. In response, the Accused who was smaller in stature than the deceased, picked up a stone and hit the deceased on the head thereby occasioning him a fatal injury.



19. I have also considered the pre-sentence report and the Accused's mitigation that she was remorseful and regretted his action. I have also considered that the families of the deceased and the Accused had undertaken traditional reconciliation and cleansing which they value and that the deceased's family had been compensated. The community and the deceased's family had no issue with the Accused being released on a non-custodial sentence. I have further noted that the Accused's family were willing to provide the Accused with all the necessary support should he be given a non-custodial sentence. In Republic Vs. Priscilla Cheronno Chebet & 2 others, Nairobi Criminal Case No. 65 of 2011, the court stated:-

“It is my considered view that reconciliation ought to be given visible and viable space in the criminal justice system as envisaged by Article 159 of *the Constitution*. For both the offender and victims, genuine reconciliation brings closure to the loss however heinous the crime committed may have been. Reconciliation is even more critical where both the offenders and the victims are family, relatives neighbours or friends. It therefore behooves the courts where the circumstances of a case permit, to promote reconciliation alongside penal sanctions. In my view, reconciliation speaks to the humanity of the offender and of the victim(s) while penal sanctions speak to society's condemnation of the offender and the offence and the two ought to work in tandem.”

20. The Accused was in pre-trial custody from August 14, 2019 to May 4, 2021 when he met the bail terms and again from April 14, 2024 his bail was cancelled, a period totaling 2 years which I have considered.

21. In addition to all the above factors, I have taken into consideration that the Accused was remorseful and regretted his rash action that led to a senseless loss of life. It is my considered view that he was fit for community based rehabilitation.

22. The Accused is sentenced to serve 3 years' probation.

Orders accordingly

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

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R. LAGAT-KORIR

JUDGE

