



**Republic v Kebwaro & 5 others (Criminal Case E039 of 2022)
[2024] KEHC 14088 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14088 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E039 OF 2022
HI ONG'UDI, J
NOVEMBER 13, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

EVANS MICHORI KEBWARO 1ST ACCUSED

KEVIN OMONDI OTIENO 2ND ACCUSED

JOSPHAT SIMIYU JUMA 3RD ACCUSED

JULIUS OMONDI OTIENO 4TH ACCUSED

DENNIS ALUSIOLA MMBOLO 5TH ACCUSED

ISAAC KINYANJUI NG'ANG'A 6TH ACCUSED

RULING

1. Evans Michori Kebwaro (1st accused) was convicted of the charge of Manslaughter contrary to section 202 as read with section 205 of the penal code, after a plea bargain agreement. The particulars were that on 2nd December, 2021 at Mawanga workers area at All Nations Kiamaina ward within Nakuru North subcounty, Nakuru county jointly with others before court unlawfully killed Beatrice Akinyi.
2. Counsel for the prosecution Mrs. Okok informed the court that the accused was a first offender. She urged this court to give him a 20-year sentence from the date of arrest in view of the circumstances of the case and the fact that he would testify as a prosecution witness.
3. A pre-sentence report dated 23rd September, 2024 was filed by Mr. Salim A.G a probation officer, Nakuru. He pointed out that the community was not ready to receive back the accused into the community after this offence. Further that the accused had other similar matters pending in court. His



conclusion was that the accused had no family support over this matter. He therefore recommended a custodial sentence.

4. In mitigation, Mr. Opondo submitted that the accused had all along been co-operative with the police leading to the arrest of all the accomplices. This to him reflected remorsefulness. He submitted that despite the community's reservations, a non-custodial sentence is part of rehabilitation which is for the good of the community.
5. Counsel referred to the case of Philip M. Kinuli [2019] eKLR which emphasizes lenient sentencing based on co-operation, and admission among others. He also referred to Muruatetu case [2017] eKLR which gives the court discretion to consider all elements of mitigation in sentencing.
6. I have considered the seriousness of the charge plus the facts of this case. I have also taken into account the pain and anguish the deceased at her young age went through before her death. It was not called for at all. It is noted that the accused was first arraigned in court on 2nd August, 2022 and had been in custody ever since. He opted for a plea bargain hence his conviction for Manslaughter.
7. The sentence for Manslaughter is provided for under section 205 of the Penal code which states:

“ Any person who commits the felony of manslaughter is liable to imprisonment for life”
8. Having considered all the facts of the case and the mitigation I sentence the accused to twelve (12) years imprisonment. The sentence to run from the date of the first appearance in court, which was 2nd August, 2022. The Right of appeal is explained.

Bail/Bond application

9. The 3rd and 5th accused persons through their counsel filed applications for review of bond terms. The applications are dated 27th September, 2024 and 3rd October, 2024. This court had by a Ruling dated 25th January, 2023 issued a bond of Ksh 2,000,000/= with a surety in similar sum to the 5th accused. The 1st, 2nd, 3rd and 4th accused were all denied bond.
10. I called for fresh pre-bail/bond reports which have been filed and were filed on 12th November, 2023, though dated 13th November, 2023.
11. M/s Linet Ogega for the 5th Accused in her affidavit stated that the 5th accused can manage a bond of Ksh 1,200,000/=.
12. Prosecution counsel Mrs Okok opposed both applications for the review of bond terms. She relied on the pre-bail reports filed in 2022 plus their affidavit dated 2/8/2022.
13. I have considered all the submissions and the pre-bail/bond reports dated 13th November, 2024. These reports show that the 3rd, 4th and 5th accused persons are no longer high flight risk individuals. They have been in custody now for over two (2) years.
14. Kelvin Omondi Otieno (Accused 2) is said to be a high flight risk having been arrested while on the run upon learning of the police looking for him.
15. From the reports filed it has been shown that the 2nd, 4th and 5th accused persons are facing several other murder cases. Being granted bond here does not mean an automatic release for them. The same must be done in the other cases for them to be let out of prison. The prosecution cannot rely on the affidavit sworn when the accused were first arraigned in court to oppose bond two (2) years plus three (3) months after pleas was taken. They should have filed fresh affidavits on the current situation.



16. The above being the position, I find it fair and just to review the bond terms issued on 25th January, 2023 by Chemitei J.
17. I hereby allow the application for the review of the bond terms issued on 25th January, 2023. The 2nd, 3rd, 4th and 5th accused shall each be released on a bond of Ksh 800,000/= with a surety in similar sum. The sureties MUST be strictly assessed by the Deputy Registrar
18. Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 13TH DAY OF NOVEMBER, 2024 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

