



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**CRIMINAL CASE NO. 3 OF 2020**

**REPUBLIC.....PROSECUTOR**

**- V E R S U S -**

**WKR.....ACCUSED**

**JUDGEMENT**

1. The Accused Person in this case is aged 16 years old (hereafter referred to as the subject). He was initially charged with Murder Contrary to Section 203 as read with Section 204 of the Penal Code.
2. The charge was reduced to one of Manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code following a successful plea bargain agreement signed on 5/11/2020.
3. The particulars of the charge of Manslaughter were that on the night of 22<sup>nd</sup> January, 2020 in Kipkelion Sub-County, within Kericho County, the subject unlawfully killed *EY*.
4. The facts of the case as presented by the Prosecution were as follows:-

*On the 22<sup>nd</sup> day of January, 2020 at around 5.00 pm, the Accused Person who was by then in Form Three at [Particulars withheld] Secondary School arrived home under unclear circumstances since he was boarding in that school. His father the deceased was by then away but he found his mother at home preparing seed for planting beans.*

*At around 8.00 pm, his mother prepared supper and gave him and while he was eating, the deceased came in.*

*The deceased questioned the Accused why he was at home and not at school. He was angry because the Accused left school and came home without his permission.*

*The deceased was furious and started quarrelling the Accused. The Accused Person stopped eating and walked towards his father (Deceased) as he continued quarrelling him.*

*The Accused Person's mother sensed danger and rushed to her neighbor to ask him to go and help cool down the Deceased and stop him from quarrelling the Accused.*

*One of the neighbours by the name HC heard the Accused Person's mother call her by her name asking her to go help separate the two who by then had already started fighting.*

*HC rushed to the scene and managed to hold the Accused and took him away from the scene. While she was walking away with the Accused, the Deceased was following them hurling insults to the Accused Person.*

*The Accused Person was angered by the insults from the Deceased and suddenly dashed back to the Deceased and started fighting him.*

*He wrestled the Deceased on the ground and sat on his belly. The Deceased then struggled and managed to overturn the Accused and sat on his belly.*

*The Deceased started throwing blows on the Accused Person's face and in an instance, the Accused Person reached for a knife which was outside on a rack used for utensils and he stabbed the Deceased severally on his chest while being pressed on the ground.*

*They continued wrestling and drug themselves into a banana plantation when the Accused overpowered the Deceased and left him lying unconscious.*

*The Accused then went to where HC was and told her he has stabbed the Deceased using a knife which he was holding on his hand.*

*HC who is the sister to the Deceased assumed the Accused and dashed to where the Deceased was and found him lying down facing up with blood all over his body. He was not able to talk so she screamed and another neighbor by the name Jackline arrived then they both carried the Deceased to the house.*

*Other neighbours arrived and helped in taking the deceased to Fort Ternan Hospital where he was pronounced dead on arrival.*

*The body of the Deceased transferred to St. Vincent De Paul's Mission Hospital Mortuary where a Post Mortem was conducted by Dr. Harry Mugon who formed the opinion that the cause of death was hypolemic shock from punctuating sharp injuries on the chest due to stabs from sharp object.*

*Meanwhile the neighbours reported the incident to Fort Ternan Police Station and the Accused who had ran away from the scene went and surrendered himself at Kokwet Police Post at 10.00 pm the same day. He was transferred to Fort Ternan Police Station where he was held in custody until the investigations were complete then charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code.*

*This has now been reduced to the offence of manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code.*

5. The Court has considered the mitigation in this case as given by the defence Counsel. The Probation Officer filed a Pre-Sentence Report in which he stated that the subject was born in 2005 and further that he is 16 years old.
6. The Report also stated that the family of the deceased is ready to receive him back to continue with his studies.
7. The Probation Officer recommended Probation Sentence for purposes of close monitoring and supervision and to make sure that the subject continues with his studies.
8. The subject pleaded guilty and saved the Courts time for trial, however, the offence committed is a very serious one considering that the subject killed his own father because the father assaulted him for coming home from school during the school term.
9. The fact that the deceased was drunk was not a good reason to fight the deceased and stab him.
10. It is not true that the subject killed his father in self defence. There is evidence that his father was not armed during the fight.
11. The subject needs to learn that his act led to the demise of his own father and that it is wrong for any child to fight his or her father.
12. I sentence the subject to two years in a Borstal Institution under the supervision of Kericho County Probation Officer subject to availability of a vacancy.
13. This matter will be mentioned on 2/3/2021 for the Probation Officer to confirm a vacancy.

**Delivered, signed and dated at Kericho this 5<sup>th</sup> day of February 2021.**

**A. N. ONGERI**

**JUDGE**