



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**HIGH COURT CRIMINAL CASE NO. 109 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**AMOS KIPROTICH LAGAT.....ACCUSED PERSON**

**SENTENCE RULING**

1. This Court convicted the Accused Person herein, Amos Kiprotich Lagat (“Accused Person”) of the offence of manslaughter contrary to section 202 as read together with section 205 of the Penal Code in a Judgment dated 22/04/2021. The Accused Person had been charged with murder contrary to section 203 of the Penal Code as read together with section 204 of the Penal Code. He had been accused of unlawfully killing, with premeditation, Kipkemboi Kipyego Alias Barnaba Kipkemboi Yegon on the 30th day of October, 2013 at Kimakaskoi village in Koibatek District within Baringo County.

2. However, the Court made a finding that although the killing of the Deceased was unlawful, it was not premeditated. It therefore convicted the Accused Person of the lesser but cognate offence of manslaughter.

3. The question that remains is what the appropriate sentence should be following the conviction. The circumstances in which the offence was committed are laid out in great detail in the Judgment. In short, the Accused Person had let his cow graze on the Deceased’s farm hence destroying the crops. The Deceased angrily confronted the Accused Person with a stick. The Accused Person took the stick away and used it to beat the more elderly Deceased – hitting him several times on his head. The Deceased fell on the ground and the Accused Person hit him at least one more time. The Deceased sustained internal head injuries from which he died a little more than a week later.

4. Ms. Mumbe, the Prosecutor, filed a Victim Impact Statement. It details the loss suffered by the family from the death and explains that the family of the Deceased is still in deep pain from the death. What pains them most, the Victim Impact Statement as well as submissions by Ms. Mumbe showed, was that the Accused Person has failed and/or refused to approach the Deceased’s family to express remorse or seek forgiveness. Ms. Mumbe told the Court that the Accused Person is a first offender. Ms. Mumbe also urged the Court to consider that the Accused Person jumped bail and had to be arrested in order for the trial to be completed.

5. On her part, Ms. Mungai, Defence Counsel, urged the Court to consider a non-custodial sentence. She said that the Accused Person is 31-year old with a wife and two children aged 3 and 5 years old; that he is the sole bread winner in his family; and that he also supports his siblings including a sister who is in secondary school. Ms. Mungai submitted that the Accused Person is remorseful and prayed for a non-custodial sentence.

6. The Accused Person also addressed the Court although he largely repeated what his counsel had submitted. He said that he had made attempts to reconcile by visiting the widow of the Deceased together with this brother but admitted that no substantive talks had taken place.

7. Sentencing is an individualized process where I am required to consider all the mitigating and aggravating circumstances as applied to the specific circumstances of the case in order to fashion an appropriate sentence that is fit to the offence and circumstances. I have considered the following four mitigating factors.

8. *First*, the Accused Person was not the aggressor although he responded with unjustified deadly force. It cannot, therefore, be said that he was gratuitously violent or depraved in his attack on the Deceased. He responded to the attack albeit with unjustified force.

9. *Second*, the Accused Person is a first offender.

10. *Third*, I have also considered his family situation. The Accused Person is a relatively young man with a young family which includes two young children.

11. These mitigating factors must be balanced with aggravating circumstances to arrive at an appropriate sentence. I have considered the views of the family of the victim for sentencing purposes as aggravating circumstances. I have also considered that the post-offence conduct of the Accused Person including the fact that he jumped bail as an aggravating factor as well. I am also not persuaded that the Accused Person is truly remorseful as he has not made any real attempts to reconcile or seek forgiveness from the family of the Deceased who are his immediate neighbours.

12. One of the objectives of sentencing is to ensure that justice is done by ensuring that absent exceptional circumstances, there is no disparity: same offences should attract similar consistent penalties. In his survey of case law in *Philip Muthiani Kathiwa v R [2015] eKLR* Justice Muriithi concluded that a case of manslaughter where mitigating and aggravating circumstances balance or cancel each other out such as this one and where the Judicial Officer has concluded that a custodial sentence is the appropriate sentence, it should attract a sentence of three and a half years imprisonment.

13. In this case, I have come to the conclusion that a custodial sentence is merited given the circumstances which I have outlined above as the only suitable way of expressing society's condemnation of the Accused Person's conduct or deter similar conduct in the future. Having noted the family's views and having considered all the mitigating circumstances, I am of the view that a custodial sentence of three years is the appropriate sentence.

**14. Consequently, in my view, a fit sentence that properly balances the mitigating circumstances with the aggravating circumstances is a sentence of three (3) years imprisonment. Accordingly, I sentence the Accused Person to three (3) years imprisonment. Since the Accused Person has been in custody since 07/05/2020, the sentence period shall be computed starting on that date.**

15. Orders accordingly.

**DATED AND DELIVERED IN NAKURU THIS 1<sup>ST</sup> DAY OF JULY, 2021.**

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**JOEL NGUGI**

**JUDGE**

**NOTE:** This judgment was delivered by video-conference pursuant to various Practice Directives by the Honourable Chief Justice authorizing the appropriate use of technology to conduct proceedings and deliver judgments in response to the COVID-19 Pandemic.