



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 9 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ROBERT EYAPARLEMUYO.....ACCUSED**

**JUDGMENT**

***Introduction***

1. The Accused was charged with murder contrary to section 203 as read with 204 of the Penal Code. The court approved a plea bargain agreement between the accused and the DPP upon the factual basis that the accused did not intend to kill the deceased.
2. Upon examination on oath of the accused, the Court confirmed that the plea bargain was concluded by the accused voluntarily and without undue influence or inducement of any kind. The court satisfied itself that the accused was fit to plead by a Certificate of fitness to plead by Dr. Mwikamaba Andrea, Psychiatrist Consultant of Meru Teaching and Referral Hospital dated 6/2/2018.
3. Giving his statement on oath on the issue of voluntariness of the plea, the accused said:

*“I am Robert Eyaparleninyo. I am 37/38. I was born in 1984. I understand that I am entitled to a full trial for the charge of murder as charged. I have now decided to plead to the lesser charge of manslaughter. I now understand that the maximum sentence for manslaughter is life sentence. I have not been promised that if I plead guilty to manslaughter I shall be released or sentenced to a lesser term. I have decided this on my own volition. I have agreed because I did the act but I did not intend to act. It was because of drunkenness. I did not intend to kill. I was not compelled to plead guilty to manslaughter.”*

The explanation by the accused of the apparently unprovoked attack on the deceased was intoxication. See *Kedisia v. R* (2009) KLR 604 citing *Karisa Kimunzu v. R* (2007) (Omolo, O’Kubasu & Nyamu, JJA.)

***Conviction***

4. The accused was subsequently charged with manslaughter contrary to section 202 as read with 235 of the Penal Code. The facts of the case were read in court as set out in the plea bargain agreement dated 24/6/2021 at paragraph 8 as follows:

*“8. Had this matter proceed for full hearing, the prosecution would have proved its case beyond any reasonable doubt based on the following facts.*

*On the 2<sup>nd</sup> day of January 2018 at around 2200hrs the deceased person Lopusi Lonyoriro and Marialusa Nanyait were seated outside Marialusa Nanyait’s manyatta chatting whereas Emarii Lomanat was also present inside the Manyatta. While the deceased and Marialusa Nanyait were seated outside the manyatta, Robert Eyaparlemuyo the accused person went to where they were seated and greeted them with anger and he was holding a club in his hands. The accused person then looked at the deceased person who was seated next to Marialusa Nanyait and said in Turkana language “lyong lo” translated to mean “you are the one”. The deceased then asked the accused person in Turkana language “nyo ibukar lyong uyong iyooloo” translated to mean, “why do you say that I am the one?” The accused then answered the deceased that he was in need of him. When the deceased heard this he stood up from where he was seated and that is when the accused person lifted the club which he had carried in his hands and hit the deceased on his head twice after which the deceased fell down and became unconscious. Marialusa Nanyait then ran away while screaming for help where as Emarii Lomanat tried to stop the accused person from hitting the deceased person again. The accused person then turned on Emarii Lomanat and before the accused person could do anything to him he ran away screaming for help. The screams attracted neighbours who were nearby and that is when the accused person escaped. The first person who arrived at the scene was Assistant Chief Augustino Ebonyo Kokot and followed by other neighbours. Marialusa Nanyait and Emarii Lomanat also did go back to the scene after the accused person had escaped. The Assistant Chief Augustino Ebonyo Kokot, Marialusa Nanyait, Emarii*

*Lomanat and other neighbours found the body of the deceased lying down with blood oozing from the nose and mouth. The head of the deceased person was also swollen but at the moment he was still breathing. The Assistant Chief Augustino Ebonyo Kokot then informed the Chief about the incident who later called the police from Isiolo police station. On the 3<sup>rd</sup> day of January 2018 at around 0300hrs the police then visited the scene and they took the deceased to Isiolo General Hospital. The deceased was then referred to Kenyatta National Hospital but as the family of the deceased were planning to transfer him there he succumbed to his injuries at around 10.00 p.m the same day. The accused person was later on arrested on the 23<sup>rd</sup> day of January by one Lokidongoi Logelaw Mariakor working as a National Police Reservist officer together with his colleagues a LMD area. They later on escorted him to Isiolo Police Station and handed him over to the police. Postmortem was conducted on the 5<sup>th</sup> day of January 2018 whereby the cause of death was found to be cardiopulmonary arrest, cerebral haemorrhage and cervical bone fracture secondary to murder.”*

5. The accused accepted the facts as true and was on the basis of the plea bargain convicted for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code.

#### **SENTENCE**

6. The Prosecution Counsel for the DPP, Ms. Nandwa, said the accused was a first offender and had no previous records. In mitigation, Counsel for the Accused Mr. Joshua Mwiti submitted as follows:

*“As the DPP has said, Accused is a first offender. Accused is remorseful and regrets the occurrence of the incident which he attributes to intoxication and provocation. When sentencing the accused, we pray the court to consider that he is a father and has children who rely on him and we pray for leniency. We also pray for consideration that he has been in custody.”*

7. The court considers that prevalence of cases of killings after drunk-driven disagreements require custodial sentence for deterrence, as well as for opportunity to reform under supervision of the prison authorities for realistic chance of rehabilitation in society. The accused has been in custody since 1/2/2018 when he was remanded awaiting trial, as he was unable to raise the bond terms of Ksh.300,000/- with one surety imposed by the court on 30/10/201, which was pending review at the time plea bargain was preferred. The court also gives credit to the accused for his plea of guilty to the lesser charge of manslaughter, unlike in **Njoroge v. R** (1988) KLR 752 where the Court of Appeal (Gachuhi, JA, Gicheru & Kwach, Ag.JA) approved a High Court decision in which the case went to full trial for murder but the accused was convicted for manslaughter on the grounds of intoxication raising a doubt as to specific intent necessary for murder, and sentenced to imprisonment for 7 years.

8. The court considers that a sentence of imprisonment for six (6) years (lower than the 7 years in **Njoroge v. R**, supra) meets the justice of the case. For good behaviour, the accused shall be released upon completion of 4 years when the remission, being 1/3 of the sentence is factored under Section 46 of the Prisons Act. The accused who is 38 years old will then be rehabilitated into a productive member of his society with the skills and reformation acquired in Prison.

#### **ORDERS**

9. Accordingly, for the reasons set above, the accused is convicted on his own plea of guilty for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code.

10. The accused is sentenced to serve imprisonment for six (6) years.

11. The sentence of imprisonment for six (6) years shall, pursuant to section 333(2) Proviso of the Criminal Procedure Code, commence on 1/2//2018 when the accused was first remanded to await his trial.

*Order accordingly.*

**DATED AND DELIVERED THIS 11<sup>H</sup> DAY OF NOVEMBER 2021.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Mr. Joshua Mwiti Advocate for the Accused person.

Ms. Nandwa, Prosecution Counsel for the Prosecution.