



**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**CRIMINAL CASE NO. 4 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**VINCENT KIPTOO CHERUIYOT.....ACCUSED**

**RULING ON SENTENCE**

1. The accused, Vincent Kiptoo Cheruiyot, 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 the 16<sup>th</sup> day of February 2018 at Chemamul Market Centre in Kericho West Sub-county Kericho County, he murdered Mathew Kipyegon Cheruiyot.
2. Pursuant to a plea bargain agreement entered into between the accused and the Office of the Director of Public Prosecutions, he pleaded guilty and was convicted on his own plea to the lesser offence of manslaughter.
3. The facts of the case as presented by the Learned Prosecution Counsel, Mr. Ayodo, are that on 16<sup>th</sup> February 2018 at around 2100 hours, the accused and his friend, one Robert Kiplangat Rotich, were in a bar at Chemamul Centre taking some drinks. They decided to go to a nearby hotel to look for some food. On reaching a hotel called Teachers, they met the deceased who had by then ordered chips and was waiting for it to be packed. The accused then demanded that the deceased buys him a plate of chips but the deceased told the accused that he did not have money. The accused and the deceased then started arguing.
4. After the deceased's chips were packed, he started walking out of the hotel with Robert Kiplangat while still arguing with the accused. Before they reached the door, the accused person followed them and hit the deceased hard on his forehead using a beer bottle that he was carrying, causing the deceased to fall down. Blood started oozing from the deceased's forehead and the accused ran away.
5. Robert tried to administer first aid to the deceased in a bid to stop the bleeding but was not successful. Two women who were running the hotel raised an alarm, calling for help. The deceased's brother, who was at a nearby kiosk, arrived at the scene and took the deceased to Sosiot Health Centre where he died while undergoing treatment. The deceased's body was transferred to Siloam mortuary where a post mortem was performed by Dr. Wesley Rotich. Dr. Rotich formed the opinion that the cause of death of the deceased was severe head injury due to trauma to the head by a sharp object. The prosecution produced the post mortem report as exhibit 1.
6. The accused was arrested at his home the following day and was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code, and pursuant to the plea agreement, the accused pleaded guilty to the lesser offence of manslaughter.
7. The Office of the DPP indicated that the state did not have any records on the accused, and he could be treated as a first offender.
8. In mitigation on behalf of the accused, Ms. Kitur stated that he was extremely remorseful for the offence, and that there was no malice aforethought in his actions. That the accused is an honest man, and that is why he had admitted the charge. He was arrested from his home and had not made an attempt to flee. He was 23 years old and with a young family, his child being 8 months of age. He was a first offender and was praying for a non-custodial sentence. He had been in custody for over a year, had learnt his lesson, and he was praying that the court takes into account the period he has been in custody.
9. Pursuant to the direction issued by this court, the Probation Office, Kericho, has prepared a social inquiry report in respect of the accused. It is indicated in the report, which is undated but was filed in court on 5<sup>th</sup> March 2019, that the accused had dropped out of school in standard 6 due to lack of interest. He was born in 1995, and is therefore about 24 years old now. He is reported to be of bad character, but he attributes his attack on the deceased to alcohol. His family pleads for a non-custodial sentence, but the family of the deceased, a young police officer in his thirties, prays that the accused should face the full force of the law. The Probation Officer observes that there is a lot of hostility against the accused and recommends a custodial sentence.
10. I have noted the contents of the social inquiry report and the mitigation on behalf of the accused. I note that he is 24 years old, has a young family, and he expresses remorse for his actions. He is also a first offender, though the social inquiry report indicates that he is reputed

to be of bad character.

11. I note, however, that the life of the deceased, also a young man, was needlessly lost. The accused was the aggressor. He picked a quarrel with the deceased over a plate of chips. He demanded to be bought chips, and when the deceased declined, started a quarrel that culminated in his fatally hitting the deceased with a bottle on the forehead.

12. While the accused expresses remorse for his actions, he acted in a manner that showed that he intended to do the deceased serious harm, if not grievous harm. While his actions may not rise to the level of malice aforethought as defined in section 206, they steered dangerously close to that level: you do not hit an unarmed man, who poses no threat to you, with a bottle on the forehead without intending to cause him serious harm.

13. Accordingly, notwithstanding that the accused has pleaded guilty to the offence of manslaughter and is a first offender, he deserves a custodial sentence. I accordingly sentence him to serve a term of imprisonment for 8 years. He has a right of appeal in 14 days.

**Dated and Signed this 4<sup>th</sup> day of April 2019**

**MUMBI NGUGI**

**JUDGE**

**Dated Delivered and Signed at Kericho this 9<sup>th</sup> day of April 2019**

**GEORGE DULU**

**JUDGE**