

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL CASE NO. E024 OF 2021

REPUBLIC.....

PROSECUTION

VERSUS

JULIUS KIMUTAI TANUI.....ACCUSED

JUDGEMENT AND SENTENCE.

1. The Accused, Julius Kimutai Tanui 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 6th November 2021 at Kapng'eno Village, Ndanai Location in Sotik Sub-County within Bomet County, he murdered Lucia Cherono Soi.

2. The Accused took plea on 24th November 2021 and pleaded not guilty to the offence.
3. On 30th November 2022, Mr. Iteipa for Accused informed the court that they wished to plea bargain.
4. On 27 November 2023, accused was given instructions to plea bargain. The accused family reconciled. They pray the matter to be allowed to plea bargain.
5. On 7th December 2023, they intended to plea bargain but the victims decline. Matter taken out of the hearing list to enable the parties to plea bargain.
6. The Accused took plea for the offence of manslaughter. The charge and every element thereof was read and explained to him in the

Kipsigis language which he understood and he pleaded guilty. The court entered a plea of guilty for the offence of manslaughter.

7. The facts as read by the Prosecutor and captured in the Plea Agreement are as follows:-

“On the 6th day of November 2021, Lucia Soi was at her home listening to local station news. Her son one Julius Tanui (accused) approached her and assaulted her using stones. The deceased screams and attracted the attention of the neighbors who came for her rescue. The deceased was then taken to Ndanai sub county hospital for treatment, water transferred to Longisa hospital. After a period of three days, the deceased succumb

to injures while receiving treatment at Longisa referral hospital.

The family had informed the state that they had forgiven the accused and have no objection to reduction of charges. The prosecution and the investigation team accept that:

- (i) The accused is the son of the deceased.**
- (ii) That there were family disagreements between the accused and his mother.**

The accused herein was arrested and later arraigned in court with the charge of murder and which offence has now commuted to a charge of manslaughter.”

8. The Accused accepted the facts as true and the court convicted him on his own guilty plea for the lesser offence of manslaughter contrary to **section**

202 as read with section 205 of the Penal Code.

Pre-Sentence Report

9. The report stated that the offence involved and affected members of the same family as the Accused and the deceased were family. deceased. The Accused asked this court for leniency.
10. The report stated that his family had forgiven him and asked this court to grant the Accused a lenient sentence. The community regarded the Accused as a responsible person and blamed the commission of the offence. That the Accused did not have any criminal history. They asked this court to consider granting the Accused a non-custodial sentence.

Victim Impact Statement.

11. The victim's family supported the accused's family's decision on forgiveness for the sake of peace and to maintain good relationships within the family. That the family members resolved to support both her children and the Accused's for them to attain proper education and further, to cater for their welfare.

Accused's Mitigation

12. Mitigation by the Accused was made on his behalf by his counsel, Mr. Leteipa. Counsel submitted that the Accused was remorseful for causing the death of the deceased. That he had sought reconciliation and asked for a probation sentence to enable him complete the traditional cleansing rituals. She

further submitted that Accused's family had forgiven him.

13. It was counsel's submission that the court considers the time the Accused had already spent in remand.

Submissions by the State

14. Mr. Njeru, the learned Prosecution Counsel submitted that the Accused had saved the court's time by plea bargaining. That the Accused was inebriated and there was a tendency to abuse alcohol to commit offences such as killing. He further submitted that the court grants the Accused an appropriate custodial sentence.

15. Sentencing serves multiple purposes as enumerated in the **Sentencing Policy Guidelines 2023** which outline the objectives of sentencing at paragraph 1.3.1 as follows: -

Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other- in so far as possible, sentences imposed should be geared towards meeting the objectives in totality.

- i. Retribution.**
- ii. Deterrence.**
- iii. Rehabilitation.**
- iv. Restorative justice.**
- v. Community Protection.**
- vi. Denunciation.**
- vii. Reconciliation.**
- viii. Reintegration.**

16. The penal section for the offence of manslaughter is contained in **section 205 of the Penal Code** which provides: -

Any person who commits the felony of manslaughter is liable to imprisonment for life.

17. I have considered the circumstances of the case.

The deceased is the mother of the accused. (who were family). The deceased was at home listening to local station news when the accused approached her and assaulted her using stones.

18. I have also considered the Accused's mitigation that he was remorseful and regretted the event.

This court appreciates the fact that this was an offence between family members and the victim's family had resolved to forgive the Accused. I have also noted that the family wanted the Accused to be given a non-custodial sentence while the Prosecution pushed for a custodial sentence.

19. The **Sentencing Policy Guidelines 2023** at paragraph 2.3.15 lists the factors that a court should consider when deciding to impose a custodial or non-custodial sentence. They are as follows: -

i) Gravity of the offence: In the absence of aggravating circumstances, or any other circumstance that renders a non-custodial sentence unsuitable, a sentence of imprisonment should be avoided with respect to sentences that have been adjudged as deserving less than three (3) years.

ii) Criminal history of the offender: Taking into account the seriousness of the offence, first offenders should be considered for non-custodial sentences except where the seriousness of the

offence crosses the custody threshold (where the offence is so serious that neither a fine or community sentence can be justified).

iii) Children in conflict with the law: Generally speaking, non-custodial orders should be imposed as a matter of course in the case of children in conflict with the law. The exception to this is in circumstances where in light of the seriousness of the offence, coupled with other factors, the court is satisfied that a custodial order is the most appropriate and would be in the child's best interest. Custodial orders should only be meted out as a measure of last resort and in accordance with the guidance provided under section 239 of the Children's Act, 2022. The court shall also issue post-committal supervision

orders upon completion of the committal orders or the attainment of the age of majority where it is appropriate to so do in light of the nature of the offence and circumstances of the offender.

iv) Conduct of the offender: Non-custodial sentences are best suited for offenders who are already remorseful and receptive to rehabilitative measures.

v) Protection of the community: Where there is evidence that the offender is likely to pose a threat to the community, a custodial sentence may be more appropriate. The probation officer's reports should inform the court of the risk posed by the offender to the community in order to inform sentencing.

vi) Offender's responsibility to third parties: Where committing an offender to a

custodial sentence is likely to unduly prejudice others, particularly vulnerable persons who depend on them, a court should consider if, in light of the nature and seriousness of the offence, the objectives of sentencing can be met with a non-custodial sentence. The court should enquire into the offender's personal circumstances and, where appropriate, seek the assistance of a pre-sentence report.

20. This is also in compliance with Article 159(2)

(c)

of the Constitution in as far as alternative dispute resolution is concerned and timely resolution of matters.

21. Flowing from the above, it is my finding that the circumstances of the case and the nature of the

deceased's death warranted the Accused to serve a custodial sentence.

22. In the end, the Accused, Julius Kimutai Tanui is sentenced to serve 10 years of imprisonment. The sentence shall run from the date of plea on 24/11/2021. 14 days right of appeal.

Judgement delivered, dated and signed this 18th day of March 2026.

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HON. JULIUS NGARNGAR

JUDGE

Judgement delivered in the presence of:

Siele/ Susan (Court Assistants)

Ms. Koech for the state

Abigael for the Accused

ORIGINAL