

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL CASE NO. E018 OF 2024

REPUBLIC.....

.....PROSECUTION

V E R S U S

DAVID KIPLANGAT SITONIK.....

ACCUSED

JUDGEMENT AND SENTENCE

1. The Accused, **DAVID KIPLANGAT SITONIK** 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 **28th day of September, 2024** at Mulot Market within Bomet East Sub-County in Bomet County, he murdered **KENNETH KIPROTICH LANGAT.**

2. The Accused took plea on **12th November, 2024** and pleaded not guilty to the offence.

3. A duly executed Plea Bargaining Agreement dated 19th November, 2024 was filed in Court and it indicated that the Accused had agreed to plead guilty to the offence of Manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code.

4. On 20th November, 2025, this Court accepted the Plea Agreement after interviewing the Accused and

satisfying itself that he executed the Plea Agreement voluntarily.

5. On the same day **(20th November, 2025)**, 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.

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

“On the material day, the offender had concluded his duties as a Waiter at the Restaurant where he worked. At around 2200 hours, after closing the day’s business he

proceeded to a nearby bar where he grappled two bottles of alcohol before heading home.

While on his way home, he was reportedly attacked by a group of assailants who robbed him of his mobile phone. During the confrontation, the Offender managed to wrestle with the attackers and forcefully snatched a metal rod from one of them. upon realizing that the Offender was not a pushover, the assailants fled the scene with his phone.

Driven by the desire to recover his stole phone, the Offender pursued them. While chasing in the direction the assailants had fled, he encountered the deceased walking along the same path. Mistakenly believing the Deceased

to be one of the robbers, the Offender confronted him and began hitting him on the head with the metal rod while demanding that he returns the stolen phone.

The Deceased raised alarm and screamed for help. Nearby night Guards responded to the distress call and rushed to his rescue. Upon seeing them approach, the Offender fled the scene and proceeded directly to the Police Station where he reported that he had been robbed of his phone.

Coincidentally, while the Offender was still at the Police Station making his report, the Night Guards who had responded to the Victim's distress call also arrived to report the assault.

One of the Guards immediately identified the Offender as the person who had attacked the Victim. He was consequently arrested for the offence of assault.

The Victim was rushed to the Hospital for treatment. Unfortunately, after 21 days of hospitalization, he succumbed to the injuries sustained during the attack. Following his death, the Offender's charges were upgraded from Assault to Murder.

On 12th November, 2024, the Accused herein was arraigned in Court with the charge of Murder, which Offence has now commuted to a charge of Manslaughter.”

7. The Accused accepted the facts as true and the Court convicted him on his own plea of guilty for the lesser offence of **Manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code.**

Pre-Sentence Report:

8. The Report stated that the offence arose from a tragic incident involving misjudgment and mistaken identity. That prior to committing the offence, the Offender had been robbed of his phone by unknown assailants and as he was pursuing them, he encountered the Victim along the path they had taken. Mistakenly believing the Victim to be one of the robbers, he attacked him using a metal rod hitting him on the head severally.

9. The Report stated that the Offender has since expressed remorse and seeks the Court's leniency through a non-custodial sentence since he was a first time offender. However, the Victim's family strongly opposes this request, maintaining that a custodial sentence would serve the interest of justice.

10. Additionally, little is known about the Offender's conduct and social ties within the Communities where he lives.

Victim Impact Statement:

11. The Victim's family is still grappling with the emotional pain occasioned by the loss of their loved one. The family strongly opposes the Offender being granted a non-custodial sentence. They maintain

that only a custodial sentence would give them a sense that justice has been served.

Accused's Mitigation:

12. The Accused expresses deep remorse for the events that led to the death of the Victim and humbly seeks the forgiveness of this Honourable Court. He has also request his family to initiate reconciliation efforts with the family of the Victim.
13. He remains hopeful that the Victim's family may eventually accept his apology and offer forgiveness. He pleads for leniency and pray to be considered for a non-custodial sentence.
14. 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.**

15. 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.

16. I have considered the circumstances of the case. The Pre-Sentence Report and the Accused's mitigation that he was remorseful and regretted the event that led to the offence. The Accused advocates for a non-custodial sentence but the Victim's family and the Probation Officer Advocate for custodial sentence.

17. 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.

18. 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.

19. In the final analysis, it is my finding that this was not a suitable case for grant of a non-custodial sentence. A life was lost unnecessarily. In my view, the Accused must serve a custodial sentence.

20. In the end, the Accused, **David Kiplangat Sitonik** is sentenced to serve **7 years imprisonment**. The Sentence shall run from the date first arraigned in Court on **12th November, 2024** for plea taking.

21. 14 days Right of Appeal.

**Judgement delivered, dated and signed this 17th
day of March, 2026.**

.....
HON. JULIUS K. NG'ARNG'AR

JUDGE

Judgement delivered in the presence of;

Siele/Susan - Court Assistants

Ms Koech for the State

Mr. Leteipa for the Accused