

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL CASE NO. E022 OF 2021

REPUBLIC.....

.....PROSECUTION

V E R S U S

EVANS KIBET MUTAI

ACCUSED

JUDGEMENT AND SENTENCE

1. The Accused, **EVANS KIBET MUTAI** 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 **23rd day of October, 2021** at Kiptenden Village, Cheptilal Sub-Location, Koiwa Location in Bomet Central Sub-County within Bomet County, jointly with another person not before Court murdered **FESTUS KETER.**

2. The Accused took plea on **8th November, 2021** where he pleaded not guilty to the offence.

3. A Plea Bargaining Agreement was filed in Court on 20th November, 2025 and it indicated that the Accused had agreed to plead guilty to the lesser offence of Manslaughter.

4. On 24th November, 2025, this Court accepted the Plea Agreement after interviewing the Accused and satisfying itself that he executed the Plea Agreement voluntarily and that he understood his trial rights.

5. On the same day (**24th 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 23rd October, 2021, the Accused and the Deceased had a quarrel over Kshs. 410/= the Accused had deducted from Kshs. 2,500/= which the Deceased had withdrawn from Mpesa Agent owned by Evans Kibet Mutai (Accused).

The Deceased wanted to compensate the deducted amount by picking a bundle of snacks from the shop of the Accused which prompted the Accused to be furious and followed the deceased and a fight ensued outside the shop of the Accused person. The Accused stabbed the Deceased on his chest with the knife and when the Accused saw that the deceased had fallen down, he rushed back to his shop.

The Deceased was rushed to Longisa Hospital for treatment and the deceased was declared dead on arrival at the Hospital.

A Post Mortem examination was conducted on the body of the said FESTUS KETER on 29th October, 2021 at Longisa Mortuary by Dr. Kirui

and the result of the said examination, the cause of death was Hypovolemic shock 2” penetrating and chest trauma massive hemothorax.

On 1st November, 2021, the Accused herein was arrested and later arraigned in Court with a charge of Murder and 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. A Pre-Sentence Report was filed on 11th March, 2026 and it indicated that the Accused and the Victim quarreled, which angered the Accused and it led the Accused to stab the Deceased and the injuries lead to the death of Deceased.

9. The Report stated that the Community perceived the Accused as non-threatening and believe that the incident was situational rather reflective. However, there were concerns regarding the safety of the Accused should he return to the community due to prevailing anger and resentment from members of the Victim's family.

10. The Report also indicate that the Victim's family remain deeply aggrieved by the loss of their kin and

strongly opposes the Accused being granted a non-custodial sentence.

Victim Impact Statement:

11. The Victim's family strongly oppose the Accused 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 expressed deep remorse for the events that led to death of the Victim and humbly seeks the forgiveness of this Honourable Court. He has also request his family to initiate reconciliation with the Victim's family

13. He remains hopeful that the Victim's family will accept his apology and offer forgiveness. He also prays for leniency and prays that he 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 and the Victim's family advocate for a non-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 is not a suitable case for grant of a non-custodial sentence. A life was lost unnecessarily. In my view, the Accused to serve a custodial sentence.

20. In the end, the Accused, **Evans Kibet Mutai** is sentenced to serve **10 years Imprisonment**. The Sentence to run from the date of Plea taking being **8th November, 2021**.

21. 14 days Right of Appeal.

**Judgement delivered, dated and signed this 18th
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

Ms Abigael for the Accused