

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL CASE NO. E025 OF 2022

REPUBLIC.....PROSECUTION

VERSUS

ELKANA KIPROP SUM.....ACCUSED

RULING ON SENTENCE

1. The accused person, a 41 years old man, was charged with the offence of murder contrary to **Section 203** as read with **Section 205** of the **Penal Code**. The particulars were that on 29/07/2022, at Kapyemit Village, Kapkeno sub-location, within Uasin Gishu County, he murdered one **Wilfred Kiplagat Sum**, his elder brother, then 51 years old.
2. **Ms. Nelly Too Advocate** represents the accused, while **Ms Racheal Mwangi** is the Prosecution Counsel currently appearing for the State.
3. The accused took plea on 28/08/2022 before **Mrima J**, and pleaded not guilty. The parties subsequently entered into plea bargain discussions which eventually culminated to the plea bargain Agreement dated 23/10/2024, which indicated that the accused had agreed to plead guilty to the lesser charge of manslaughter, and to let the Court then determine the sentence.
4. The matter then came up for plea bargain hearing before me on 4/07/2025. The accused was sworn on oath, and after examining him, I recorded my satisfaction that **Section 137F-137G** of the **Criminal Procedure Act**, governing the plea bargain process had been complied with, that the accused had signed the agreement together with his Counsel, voluntarily, and without any coercion, that he fully understood the effect thereof, and that members of the family had been involved in the process. I thus allowed accused to take a fresh plea, now on the fresh charge of manslaughter contrary to **Section 202** as read with **Section 205** of the **Penal Code**, which he did, and upon which he then pleaded guilty. The statement of facts of the case (factual basis) was then read out to the accused. The same was basically as follows:

“The deceased Wilfred Kiplagat Tum was a brother to the accused. On 28th July 2022, the accused was walking home from a chang’aa den located at Kapyemit village Uasin Gishu. He was in the company of a friend, Julius Kipsang Ng’etich. On the way, the two who had taken chang’aa met the deceased near his home at around 1400hrs.”

Upon meeting the accused, the deceased grabbed his shirt. A fight between the two ensued. They wrestled and fell down on a murrum road. The accused landed on top of the deceased. Their fight continued prompting Julius Kipsang to intervene. Kipsang pulled the accused away from the deceased. The deceased then proceeded to his homestead while bleeding from the head.

Inside, the deceased called his son, Kelvin Kipchumba. Kipchumba came at around 1750hrs and found the deceased still bleeding from his head and mouth.

Asked about his injuries, the deceased said the accused had assaulted him. The deceased was not rushed to hospital immediately. He insisted on getting some rest first.

The next day, calls and knocks at the deceased's door from his co-worker, Abraham Kiplagat, were unresponsive. Abraham called the deceased's son who pushed the door open. They found the deceased lying dead. Other family members, a nyumba kumi volunteer, and the police were alerted. Police processed the scene and arrested the accused. He had fresh wounds on his upper lip.

Dr. Chesori subsequently conducted an autopsy at Moi Teaching & Referral Hospital. The deceased's body was identified to him by Richard Kiprono Sum and Irine Chemutai Kirwa. He formed the opinion that the cause of death was asphyxia due to food aspiration complicating severe head injury secondary to blunt force trauma. Post mortem report is dated 2nd August, 2022.

In light of the above, a decision was made to charge the accused with murder contrary to section 203 read with 204 of the Penal Code which by this plea agreement has been reduced to manslaughter.”

5. Prosecution Counsel then produced the Post Mortem Report dated 2/08/2022, Exhibit Memo dated 24/02/2022, Government Analyst Report dated 25/04/2023, grey trench coat, small murrum stone, and yellow-brown-reddish blanket referred to as exhibits.
6. When asked to confirm or refute or comment on the correctness of the said facts as read out, the accused confirmed the same as being correct and true. Satisfied that the statement of facts read out disclosed sufficient factual basis for the charge, this Court accordingly convicted the accused on the offence of manslaughter on his own plea of guilty.

7. Regarding the sentence to be meted out, **Ms. Mwangi** informed the Court that there were no previous criminal records relating to the accused hence he could be treated as a first offender.
8. On her part, **Ms. Too**, Counsel for the accused, in mitigation, prayed for a lenient sentence and submitted that the accused is remorseful, and regrets the loss of his brother's life, and has apologized. She submitted that the accused is 40 years old with 3 children, the eldest being 12 years old and the youngest being 7, he is from a humble background and relies on errand jobs, and that he is the sole provider even for his said late brother's children. Counsel submitted that the offence was not planned, but was a spur of the moment, the Accused, while in remand, has attended vocational training, and that he has been in custody since July 2022.
9. I then directed that a pre-sentence Report be prepared and filed, which was done. The Report, dated 31/10//2025 and prepared by the Probation & Aftercare Service indicated that it had been compiled after consideration of the circumstances of the offence, the victim's impact, and the view of the local administration.

Determination

10. The applicable law on sentence for the offence of manslaughter is **Section 205** of the **Penal Code** which provides as follows:

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

11. Under the Plea Bargain Agreement in this case, the Prosecution recommended a prison sentence of not more than 15 years', while the defence proposed 5 years.
12. In determining the appropriate sentence to impose, I take into account the Supreme Court decision in the the case of **Francis Karioko Muruatetu & Another v Republic [2017] eKLR**) in which it guided that, in sentencing, the following mitigating factors would be applicable; **(a) age of the offender; (b) being a first offender; (c) whether the offender pleaded guilty; (d) character and record of the offender; (e) commission of the offence in response to gender-based violence; (f) remorsefulness of the offender; (g) the possibility of reform and social re-adaptation of the offender; and, (h) any other factor that the Court considers relevant.**

13. Similarly, the Court of Appeal, in the case of **Daniel Kipkosgei Letting Vs. Republic** [2021] eKLR, pronounced as follows;

“With regard to the above, we observe that the purpose and objectives of sentencing as stated in the Judiciary Sentencing policy should be commensurate and proportionate to the crime committed and the manner in which it was committed. The sentencing should be one that meets the end of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to.”

14. Further, **Majanja J**, in quoting **Francis Karioko Muruatetu (supra)**, in the case of **Michael Kathewa Laichena & another v Republic** [2018] eKLR, stated as follows:

“The Sentencing Policy Guidelines, 2016 (“the Guidelines”) published by the Kenya Judiciary provide a four tier methodology for determination of a custodial sentence. The starting point is establishing the custodial sentence under the applicable statute. Second, consider the mitigating circumstances or circumstances that would lessen the term of the custodial sentence. Third, aggravating circumstances that will go to increase the sentence. Fourth, weigh both aggravating and mitigating circumstances.”

15. With the above guidelines in mind, I have considered the manner in which the offence was committed, the circumstances whereof strongly indicate that the accused may not have been premeditated or pre-planned but a spur of the moment action arising as a result of an altercation between the accused and the deceased when they met on the road although the reason for their altercation was not revealed. I consider that the head injury that is reported to have eventually led to the death of the deceased on the next day was caused by a fall on the murrum when the accused and the deceased started fighting on the road. Considering that the cause of injury was found to be **“asphyxia due to food aspiration complicating severe head injury secondary to blunt force trauma”**, the impression I get is that the injury was not so severe and complications only arose later. It is therefore very likely that the deceased could have been saved had he received medical attention. The actions of the accused also appear to have been influenced by intoxication as the accused is said have been drinking at a chan’gaa den before he the deceased on the road. There is also no allegation that the accused was armed with any weapon during the fight, or used any weapon. I also take into account the fact that the accused has been described as a first offender, and is also said to be from a

humble background having lost both parents at a young age, and has young children although his wife left him in 2018. He also entered into the plea bargain agreement and thus pleaded guilty to the lesser charge of manslaughter, in the process, saving much judicial time. I have also considered the apparent remorse he has displayed.

16. I have also considered the contents, findings and recommendations of the Pre-sentence Report. The salient observations I make from the Report are although that the accused is reported to have a history of early delinquency in his youth and alcohol use. His family is also said keen to welcome him back and that the children of the deceased have since made amends with the accused and forgiven him and thus have no objection to release of the accused and that cultural rites will be conducted to cleanse the accused if he is released. The area Chief is also said to be in favour of a non-custodial sentence. I have also taken into account the age of the accused (41 years old), and his visible desire for re-integration to the community to rebuild his life.

17. The above are no doubt, mitigating factors which ought to have a bearing on the sentence to be imposed.

18. There are however notable aggravating circumstances. For instance, the post mortem report paints the picture of a violent fall suffered by the deceased as indicated by the severe injuries he sustained to the head. By engaging in the fight with the deceased, the accused ought to have known that he was taking the risk of harming the deceased in any way possible, even fatally. Looking at the circumstances of the case, the accused appears to have employed unjustifiable and unnecessarily excessive violence in fighting the deceased. There is no indication that the accused was under any imminent danger from the deceased, and if he was, he had the option of neutralizing the tension by taking flight by simply running away from the deceased. Instead, he opted for the flawed judgment of fighting back. These are no doubt significant aggravating circumstances which this Court cannot close its eyes to.

19. In the circumstances, I find that a non-custodial sentence would not be appropriate in this case. Through a needless and rash action by the accused to engage in an unnecessary fight, a human life was lost and the Court must reiterate that it is not acceptable to do anything that may take a human life extra-judicially, even if unintended, whatever the circumstances or level of provocation. I will therefore impose a prison sentence but since I find no indication that the accused was at any point released on bond or bail since his arrest after occurrence of

the incident on or about 29/07/2022, the period that he will serve the prison sentence shall be mitigated as a result of consideration of the period he already served in remand custody.

Final Orders

20. In circumstances, I make orders as follows:

- i) I hereby sentence the accused, **Elkana Kiprop Sum**, to serve six **(6) years** imprisonment.
- ii) As stipulated under **Section 333(2)** of the **Criminal Procedure Act**, the period already spent in remand custody by the accused before sentence shall be deducted in the computation of the period of imprisonment to be served. In other words, the period of serving the prison sentence shall be computed from the date that the accused was arrested, namely, 29/07/2022.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 18TH DAY OF MARCH 2026

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WANANDA JOHN R. ANURO
JUDGE

Delivered in the presence of:

Accused person present physically in Court

N/A for the accused person's Advocate

Ms. Muriithi for the State

Court Assistant: Brian Kimathi