

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

HIGH COURT CRIMINAL CASE NO. 18 OF 2020

REPUBLIC.....

.... PROSECUTION

VERSUS

MICHAEL LEBOO KIKWAI.....

..... ACCUSED

JUDGMENT ON SENTENCE

1. The accused was arraigned before the court charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code (Cap 63) Laws of Kenya. The particulars of the charge are as per the charge sheet.
2. The information was read to him and he pleaded not guilty thereto consequently the case was fully heard. By a judgment dated 10th February 2026, he

was acquitted of the charge of murder but was convicted on the lesser charge manslaughter contrary to section 202 as read with section 205 of the Penal Code.

3. Subsequently, the court was given records which indicate that the accused is a first offender. The defence counsel offered mitigation submissions on behalf of the accused which are considered herein. In the same vein, the court ordered for and was provided with the pre-sentence report and victim impact assessment report which are also considered herein.
4. Pursuant to the aforesaid, the court notes that the accused is a first offender. The reports availed reveals that the ADC Farm where the offence was committed had been a subject of clashes between the Maasai and Kalenjin Communities living in the area for a long time and that two other people were

killed in the clashes prior to the death of the deceased.

5. The pre-sentence report reveals that the accused's family has strong family ties, and pray for leniency stating that the offence was more mob justice. That the accused is an industrious and responsible father and the sole bread winner of his family. The family members acknowledge that the deceased's family has suffered trauma and the genuinely express regret.
6. The pre-sentence report further indicate that the accused is forty-three (43) years old and attained education up to Form 3 but dropped out due to lack of fees. That he is married to Ann Narikuriman and they have four (4) children all in primary school. Further at the time of arrest he was a farmer.
7. That the accused regrets committing the offence and states that he had not planned on ending the life of the deceased whom he knew. That he

acknowledges that a life was lost and it cannot be replaced but prays for a non-custodial sentence.

8. That the community acknowledge that disputes over the land between the two communities and vouch for the accused's release, stating the deceased was unfortunately killed in a massive mob justice attack by community members and ask the court to mete out a non-custodial sentence.
9. On the other part, the investigating officer indicates that there have been frequent attacks at ADC Farm and asks the court to value human life and uphold justice.
10. However, the victim impact report reveals that the deceased's family were emotionally, psychologically, socially and economically devastated by his death. That the deceased was the sole bread winner and left behind a wife and five (5) children, two (2) children who are still school and one child with special needs.

11. That, due to the shift of family responsibilities, the deceased wife was emotionally drained causing her frail physical appearance and re-location of the family from Narok to Samburu where the deceased's wife hails from.
12. The deceased son Dickson Kelele stated that their life is hard as they lack school fees and their basic needs. That the mention of the deceased's name stirs up emotional stress as they have not received any counselling. That the family is still bitter at the loss of the deceased and the deceased's wife advocate for a harsh sentence.
13. In conclusion, the probation officer left the matter to the court to make an informed decision based on the circumstances of the case but urged to consider a lenient sentence including a maximum non-custodial sentence of three (3) years.
14. The accused in mitigation submissions referred the court to the case of Muruatetu & another v

Republic; Katiba Institute & 5 others (Amicus Curiae) [2017] KESC 2 (KLR) where the Supreme Court of Kenya noted the importance of mitigation that allows the court to consider factors that it may have overlooked in the accused personal history and circumstances of the offender that, if not considered would make the sentence disproportionate to his criminal culpability. Further, the Supreme Court listed factors to be considered by a court in passing sentence.

15. The accused urged the court to consider that he is a first offender and that the incident was unfortunate and accidental resulting from a mob justice attack. That he has a young family with school going children who depend on him as the breadwinner. Further, he has a good record with his family and the community.
16. Furthermore, he attended court consistently from the year 2020 to 2026 despite being out on bond an

indication that he his patient, consistent and obeys the law. That he is remorseful and prays for a second chance in the society.

17. In addition to the afore reports, the objectives of sentence as outlined under clause 1.3 of the Sentencing Policy Guidelines (2023) stated below are considered:-

a) Retribution: To punish the offender for his/her criminal conduct in a just manner. It serves to deter future crime. Victims and society might feel satisfied that the criminal justice system is functioning well when they learn that the offender has received an appropriate sentence for their crimes, which raises trust in the criminal justice system

b) Deterrence: To deter the offender from committing a similar offence or any other offence in future as well as to discourage the

public from committing similar offences. Thus it is divided into two components; individual and general deterrence. Individual deterrence is to dissuade the perpetrator with the objective to inflict a punishment severe enough to deter the offender from engaging in criminal activity. The convict is expected to be discouraged from committing crimes in the future as a result of the sentence. The society is the target of general deterrence. Other people are deterred from committing those offences by the punishment meted out to those who commit them.

c) Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person. It aims at changing the offenders and make it easier for them to reintegrate into society, through a variety of programs and treatments. It focusses on

treating the root reasons of criminal behaviour, such as dependency, mental health conditions, or a lack of education. The objective is to give the offender the resources and assistance they need to upon release, become law-abiding citizens.

d) Restorative justice: To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs. Any harm done to the victim may be compelled to be repaired or restored by the court. The goal is to put the victim back in his pre-crime status or position. The goal of restoration is to make up for any harm the perpetrator has caused the victim.

e) Restitution deters crime by financially penalizing the offender. It is somewhat like a civil lawsuit damages judgement and occurs when the court directs the offender to compensate the victim for any injury. Restitution may be required in cases of financial loss, property damage, and, in rare cases, mental suffering. It may also take the form of a fine to help defray part of the expense of the criminal investigation and punishment.

f) Community protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.

g) Denunciation: To clearly communicate the community's condemnation of the criminal conduct.

h) Reconciliation: To mend the relationship between the offender, the victim and the community.

i) Reintegration: To facilitate the re-entry of the offender into the society.

j) Incapacitation's main purpose is to simply keep offenders outside of society so that everyone is safe from their potentially harmful actions. A person convicted of a crime should not be permitted to mingle with the general public if there is no assurance that they will not commit the same crime again. In certain civilizations, punishment takes the form of death sentence or it may entail a sentence of life in jail without the chance of release.

18. In addition, the Supreme Court of Kenya set down the factors to consider while meting out sentence in the case of *Muruatetu & another v Republic; Katiba*

Institute & 5 others (Amicus Curiae) [2017] KESC 2

(KLR) as follows:

“71. As a consequence of this decision, paragraph 6.4-6.7 of the guidelines are no longer applicable. To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

(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;

(h) any other factor that the court considers relevant.”

19. To revert back to this matter, the sentence for the offence of manslaughter is provided for under section 205 of the Penal Code being:

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

20. In this matter it is acknowledged the accused is a first offender. The family members and community have given a positive report. However, the pain of the victim's family and sentiments of a severe sentence cannot be ignored.

21. It suffices to note that loss of life is permanent. It is irreversible. The pain associated with it can also be long time experience depending on many factors especially where the victim was the sole bread, and the absence of the deceased cause tremendous financial loss and pain to the family members who depended on him.

22. Consequently, although the court established and found that the accused had no malice aforethought

but it will be unfair to allow him a non-custodial sentence to walk to freedom as the victim's family bleeds with pain.

23. As such the scale of justice must be seen to balance and justice be seen to be done. In addition, if one arms himself with arrows and bows and join a group of mob justice he cannot exonerate himself by arguing it was a case of mob justice. He remains a part of that mob justice.

24. Having considered the period, the accused has been on trial for over five (5) years I sentence the accused to serve ten (10) years imprisonment subject to remission and any period spent in custody.

25. Right of appeal 14 days explained.

Dated, delivered and signed on this 18th day of March 2026.

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms Chepkonga for the state

Mr Owour for the accused

Accused present virtually

Hannah court Asistant