



**Republic v Lempei (Criminal Case E086 of 2025)
[2025] KEMC 159 (KLR) (15 July 2025) (Directions)**

Neutral citation: [2025] KEMC 159 (KLR)

**REPUBLIC OF KENYA
IN THE MARALAL LAW COURTS
CRIMINAL CASE E086 OF 2025
AT SITATI, SPM
JULY 15, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

LTONINGE LEMPEI ACCUSED

DIRECTIONS

1. The accused person was charged with the offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. the particulars were that on 18th March, 2205 at Lolok-lomong’og village in Samburu Central Sub-County of Samburu County he unlawfully killed NGUTUNY LEKISIMA. He pleaded not guilty whereupon his counsel Mr. Lenkidi Mpapa, Advocate initiated a plea agreement negotiation.
2. On today’s return date, the learned Prosecutor Mr. Peter Esimkele informed the court that the DPP, the accused person and defence counsel had executed a plea agreement. In summary, he told the court that the parties had agreed that the accused person pleads guilty to the charge of manslaughter with a sentence of 10 years imprisonment proposed subject to the court’s discretion on the final sentence. The summary facts were that the accused and the deceased went to the local market where they descended into a quarrel resulting in the deceased striking the accused on the forehead using a Samburu rungu and in return the accused stabbed the deceased with a Samburu sword killing him on the spot.
3. After presenting the factual basis of the plea agreement, the court was called upon to determine whether the proposed agreement was satisfactory before further legal steps could be taken hence these directions.

Directions

1. The considered directions of the court are based on Section 137(F)(2) of the *Criminal Procedure Code* which provides as follows;



- (2) The prosecutor shall lay before the court the factual basis of a plea agreement and the court determine and be satisfied that there exists a factual basis of the plea agreement.
2. In order for the court to be so satisfied, the court found guidance from section 137A (1) of the *Criminal Procedure Code*;

Plea agreement negotiation

- (1) Subject to section 137B, a prosecutor and an accused person nor his representative may negotiate and enter into an agreement in respect of –
 - (a) Reduction of a charge to a lesser included offence.
 - (b) Withdrawal of the charge or a stay of the charges or the promise not to proceed with other possible charges.
3. From the foregoing, the factual foundation of a plea agreement must be either a reduction of a criminal charge to a lesser charge or withdrawal or stay or promise not to proceed with other additional charges.
4. The plea agreement presented for the adoption by the court does not contain a factual reduction of a charge to a lesser known charge or the stay or withdrawal or abandonment of any other charges. This is because at paragraphs 3 and 12 of the Agreement, the only major factual bases set out are for the accused person to plead directly and guilty to the only charge of manslaughter and for the court to consider the custodial sentence of 10 years' imprisonment.

In the court's view, this plea agreement does not comply with section 137A (1)(b) of the *Criminal Procedure Code* which set out the limits and boundaries of a negotiated plea;

- (i) either the reduction of the charge to a lesser known offence or
 - (ii) withdrawal or
 - (iii) abandonment of any additional charge available to the DPP
5. In the light of the foregoing, it is the determination of this Honourable court under section 137F (2) of the *Criminal Procedure Code* that;
 - (i) The plea agreement dated 15.07.2025 is factually unsound since it neither proposes a reduction of any charge nor stay nor withdrawal nor abandonment of any additional charges as required by section 137A (1) (b) of the *Criminal Procedure Code*.
 - (ii) The plea agreement is rejected and is dismissed as untenable in fact. If the accused wishes to plead guilty to the only charge available in the case, the plea agreement is not available. He should just plead directly.
6. In the result, under section 137J of the *Criminal Procedure Code*, the court directs as follows;
 - i. The plea agreement is declared null and void and no party shall be bound by its terms.



- ii. The present recorded proceeding shall be inadmissible to any subsequent trial or any future trial relating to the same facts.
- iii. The court hereby enters a plea of not guilty to the charges.
- iv. Under section 137(J)(2) of the *Criminal Procedure Code*, the case is transmitted to Court 2 for trial on the merits.
- v. No further plea negotiations shall be allowed.
- vi. No right of appeal exists against this order of rejection.
- vii. Mention tomorrow 16.07.2025 for plea taking before court 2.

DATED, READ AND SIGNED AT MARALAL THIS 15th DAY OF JULY, 2025

HON.T. A. SITATI

SENIOR PRINCIPAL MAGISTRATE

MARALAL LAW COURTS

Present

Accused Person & Mr. Lenkidi Advocate

Dpp Esimkele

Court Assistant Samwel

