

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE NO. E012 OF 2024

REPUBLIC DPP

=VERSUS=

**DENNIS WAFULA
ACCUSED**

**Coram: Justice R. Nyakundi
Ms Kirenge
M/S Hamber Advocate**

JUDGMENT

1. The Accused herein **Dennis Wafula** was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on 14th March 2024 at unknown time at Kapsiliot area, Meibeki Location, Moiben Sub-County within Uasin Gishu County in the Republic of Kenya murdered **Thomas Lopeiyo**.
2. The accused pleaded not guilty to the offence and the trial began in earnest in which three witnesses were summoned to adduce evidence to discharge the burden of proof in consonant with Section 107(1), 108 and 109 of the Evidence Act. The three witnesses so far who testified provided the legal framework upon which the allegations of murder were based to necessitate indictment of the accused person. The lead Counsel of the Prosecution was Ms Sidi Kirenge whereas the defence was led by M/S Hamber Advocate who facilitated the legal representation as provided for under Article 50(2)(h) of the Constitution.
3. In the course of the trial a motion was moved by the defence orally so to have the issues canvassed with regard to the murder of the deceased contrary to Section 203 of the Penal Code be negotiated under the legal framework provided for under Section 137(A-O) of

the Criminal Procedure Code commonly known as plea-bargaining agreement.

4. The plea-bargaining is a doctrine and a legal process in the administration of criminal justice in which the parties to the case enter into a negotiated agreement where an accused pleads guilty in exchange for concessions such as reduced charges or shorter sentences to bring case to an end. It serves as an alternative to full trials balancing judicial autonomy, victim interest and public interest at the same time. The purpose of the doctrine is rooted in consensual resolution of criminal liability. It acts as a mechanism to avoid lengthy, costly trials and achieve safety justice. This procedure involves voluntary consent from the accused and typically requires approval from the Judge to ensure fairness and adherence to the law.
5. This canon in our criminal justice system has become a label often used to describe a series of disparate mechanisms to investigate, prosecute and adjudicate criminal liability. For some they view plea-bargaining protocols as the indispensable tool to address criminal conduct while for others it has become a symbol of coercion and injustice. However it must be understood that consensual resolution of criminal liability is an ancient practice within the African customs and culture. The deeper reading and appreciation of the elements of plea bargaining, one which stands out is an admission of guilt in return or in the hope by an accused person that he or she will be sentenced to a shorter term of imprisonment or the alternative of a non-custodial sentence. In Kenya sometimes it is thought of an innovation in search of the truth which in certain cases in a full trial tends to be very laborious.
6. What has been some of the benefits associated with plea-bargaining agreements in the country? The expedited procedure allows for more efficient resolution of cases promoting both judicial and prosecutorial efficiency. It is now very common for the suspect of manslaughter and murder cases to elect to adopt a plea-bargaining

procedure so that they can benefit from shorter sentences or even non-custodial sentences as the case may be in our adjudication of cases. The other aspect which is gaining prominence in plea bargaining agreements is the victim-accused reconciliation. The roots to this approach is to reawaken the protocols of which always existed in traditional criminal justice system within our multi-cultural society. This is one area of criminal justice administration which brings into the fore the sentencing principle of restorative justice and rehabilitation of the offender. In the common law world, an offender who goes through trial and his or her case is proved beyond reasonable doubt ends up being found guilty and convicted of the offence ought to be punished in line with the principle or objective of deterrence and retribution.

7. In the instant case the accused person elected to enter into a plea-bargaining agreement with the State which culminated into him being charged with a lesser offence of manslaughter contrary to Section 202 of the Penal Code punishable under Section 205 of the same Code. This Court gave leave to both the accused and the State to initiate plea bargaining negotiations to culminate into a plea agreement. From the perspective of the law, the constitutional rights under Article 50 on fair trial rights nuances the plea-bargaining agreement negotiations. Essentially, the accused persons retain and is informed about his rights on the right to keep silent, the right to self-incrimination, the right to seek a full trial even on the reduced indictment. It is from this information and explanation on his or her constitutional rights that he or she is expected to make an informed choice for right on presumption of innocence until the contrary is proved should never be derogated from by the State.
8. In the case at bar, the plea-bargaining agreement was negotiated and agreed upon to have it registered with the Court for consideration to constitute a mini trial for the charge against the accused. The plea agreement dated 8th April 2026 duly signed by

both parties was adopted in full force as the instrument which means the threshold of a fair trial under Article 50 of the Constitution as per the law established.

9. The accused admitted the offence of manslaughter contrary to Section 202 of killing Thomas Lopeiyo on 14th March 2024 at Meibeki Location. The accused having admitted the offence, it was the duty of the Prosecution to lay down the brief facts upon which the offence was committed to bring it within the ambit of Section 202 of the Penal Code.

10. Thus;

Facts:

Had this case gone to full trial, the State would have presented evidence sufficient to prove the facts below:

On the 14th of March 2024, the Accused Person's house was broken into and subsequently, a herbicide known as Weedol was stolen therein. From the evidence of the witnesses being, Abraham Kibet and Jackson Khamasi (now deceased), the Accused suspected the Deceased for having stolen the said herbicide having been informed by one Joseph (at large) that the Deceased was the culprit. On 22nd March 2024, the Accused person asked Abraham Kibet (PW2) to accompany him to the house of the Deceased to inquire about the theft. Upon reaching and questioning him, the Deceased denied being involved. The Accused and Abraham escorted the Deceased to the house of Joseph-the alleged witness to the said theft, in a bid to confront the Deceased in his presence. It was at this point that Joseph sat the Deceased down and, in a bid, to force him to confess, grabbed a wooden stick and began beating the Accused with a wooden stick. The Accused Person similarly joined the said Joseph by beating the Deceased with a stick while questioning him as to where he took the stolen herbicide. In the midst of this, the Deceased admitted to stealing from the Accused. The duo persisted in

beating the Accused despite the request by the requests by PW1, Jackson Khamasi (now deceased) and other onlookers to stop. The Deceased subsequently became unconscious and Joseph ran away after this. The Accused and PW1 left shortly thereafter after assisting the Deceased to a shade so that he could cool down. The Deceased passed on at some point that afternoon and immediately the local administration and Moiben Police were notified and investigations began. The Deceased was arrested as one of the people who was last seen assaulting the Deceased. The Post Mortem Form tendered by PW1-Dr. Sharon shows that the Deceased had multiple external injuries including swellings on the limbs, head, back, abdomen and extensive soft tissue injuries and hematomas all over the body. Her finding was that the Deceased died as a result of severe and extensive injuries arising from an assault from a blunt object. In summary, the evidence shows that the assault herein arose from a dispute against the Accused in which he led people to the Deceased and where he (together with another not before the Court) was seen questioning and assaulting him, which assault subsequently led to the Deceased's death.

11. Thereafter based on the above facts the accused admitted each value of facts in the chain of events which culminated in the death of the deceased. He was therefore convicted on his own plea of guilty for the offence of manslaughter. What followed were brief submissions on mitigation that he regrets the offence, he has no previous conviction, prior to this incident he was a man of good character and behavior within the community and his family. It was also the contention of the learned Counsel M/S Hamber on behalf of the accused that the court looks at his personal circumstances to grant him a non-custodial sentence.
12. This case has been reviewed and the circumstances in which this murder was committed in violation of Article 26 of the

Constitution. I bear in mind deeply and anxiously so, that this is one of the solemn moment for a Judge to determine and decide the fate of the accused person within the prescriptive provisions of Section 205 on punishment of life for the offence of manslaughter. I further bear in mind the age of the accused, his past good behavior, the same being a family man who has come to terms with his actions and owned up to enter into a plea agreement with the State. The accused also in his mitigation presents a picture of him being remorse and regrets the offence.

13. From the facts of this case, this is what one describes as the herbicide murder case. It is alleged that the deceased was a suspected thief of herbicide known as Weedol stolen from the accused's house or premises. This was the excuse and justification of the accused person and his conspirators to attack the deceased and eventually he succumbed to death from the injuries sustained as stated in the postmortem report. What a tragedy of our humanity, negligent, reckless and careless as to the value of the right to life of a human being? For the accused person, if indeed it is true the theft of the herbicide was of a higher value compared to the right to life of a human being. It is the command of the Constitution that every Kenyan must defend the Constitution. In this respect, it was the duty of the accused person and his gang to protect the Constitution by guaranteeing that the right to life of the deceased was not lost. They had the avenues of securing justice to themselves for the offence committed by the deceased by reporting the matter to the Area Chief and the National Police Service to investigate the crime and have the deceased punished before it.

14. The accused had no regard to the deceased when he committed this offence. He had no regard to the family of the deceased. All he had regard to is the loss of his herbicide, an item of zero value and used to kill cockroaches and other insects within the household. His ego and selfish needs manifested *mens rea* which executed with precision to kill the deceased. Even though the

submissions were made by M/S Hamber for the accused that the accused is not a danger to the community, but in reality the period prior, during and after the attack of the deceased tells a different story as the accused set out without any thought of the consequences to commit an heinous crime of homicide to an innocent citizen of this Republic.

15. *The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:*

- a) to denounce unlawful conduct;*
- b) to deter the offender and other persons from committing offences;*
- c) to separate offenders from society, where necessary;*
- d) to assist in rehabilitating offenders;*
- e) to provide reparations for harm done to victims or the community; and*
- f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community. (1995, c.22, s.6).*

16. The question which I have to ask myself in considering the facts of this matter and the principles I have referred to is whether the accused acted in circumstances of diminished responsibility or emotional storming. One must also not forget that unlike other cases of manslaughter where there is the defence of self under Section 17 of the Penal Code and Section 207 and 208 on provocation the accused embarked on a campaign over prolonged period of time to even rally some other suspects who were not before this court to arm themselves with crude weapons and executed this crime without excuse or justification. The accused had sufficient time and opportunity to reflect on his conduct but still persisted in seeking revenge that the deceased was the one who stole the herbicide and ultimately conspired with others to murder the deceased. It was

never his defence that he acted in a fit of rage or on the spur of the moment or with diminished responsibility which is usually the case where there is absence of malice aforethought.

17. In deciding the appropriate sentence, I have weighed both the mitigating and aggravating factors. In considering these and the nature of the offence, the interest of the society, the victims survived of the deceased and the accused, I am of the view that to impose a prescribed life sentence will be disproportionate and unjust. I acknowledge that this is a serious offence warranting a long term of imprisonment but I must also not lose sight of the fact that it is my duty to balance all factors and come to a just sentence. With regard to this offence, I impose a sentence of eighteen (18) years imprisonment with a discounted credit under Section 33(2) of Criminal Procedure Code for the execution of sentence to commence on 8th of April 2024. It is so ordered.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 10TH DAY OF
APRIL 2026.**

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**R. NYAKUNDI
JUDGE**