

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**CRIMINAL CASE NO. 10 OF 2020**

REPUBLIC.....PROSECUTION

VERSUS

WILLY

TIROP

NGETICH.....ACCUSED

**RULING ON SENTENCE**

1. The accused person was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars were that on 19/01/2020, at Kileges village in Ainabkoi sub-County, within Uasin Gishu County, he murdered one **Julius Kipkoge Busienei**.
2. **Mr. Omusundi** represents the accused as the Pro bono Advocate. **Mr. Kosgey** has been holding **Mr. Omusundi's** brief, while **Ms. C. Muriithi** is the Prosecution Counsel currently appearing for the State.
3. The accused was arraigned before **O. Sewe J** on 29/10/2020 before whom he later took plea on 6/02/2020, and pleaded not guilty. The parties subsequently entered into plea bargain discussions which eventually culminated to the plea bargain Agreement dated 26/09/2022, 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 on 10/11/2025 and on 21/11/2025. 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, and that he fully understood the effect thereof, and that members of the family of the deceased had been involved in the process. I thus allowed the 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:

*“On 19<sup>th</sup> January 2020 at around midnight, the accused person was at his farm guarding his maize plantation as he had noted that someone had been stealing his maize cobs. The accused was armed with a whip for protection. While patrolling his farm, he spotted the deceased stealing his maize cobs. The accused went to where the deceased was and started beating him using the whip that he was armed with. He was joined by an unidentified person who was armed with a stick and they continued beating the deceased. The deceased screamed for help and one Abraham Kibet whose homestead was neighboring the accused’s farm responded to the distress call. The said Abraham Kibet proceeded to the scene and found the accused and his accomplice assaulting the deceased. Abraham asked the accused and his accomplice to stop beating the deceased but they refused.*

*Abraham then left the scene and proceeded to the home of one David Kiptoo who is the deceased’s brother and informed him about what had transpired, the accused and his accomplice then put the deceased in the accused’s motor vehicle and drove off. David and Abraham rushed back to the scene but when they arrived there, they did not find the deceased. The accused and his accomplice were also not there. They followed the path leading to the main road and saw the accused’s motor vehicle being driven off. The following morning at around 9:00 am the deceased was brought back to his homestead by an unknown motor cycle rider. He had visible injuries on the head and on the left side of the face. He was also bleeding from the left leg. The deceased informed his brother David Kiptoo that he had been badly assaulted by the accused and his accomplice and he had been dumped at an unknown place in Ngeria. The deceased then lost consciousness and was rushed to Plateau Mission Hospital where he died while undergoing treatment. Police officers visited the scene of the crime and recovered the black cable whip that the accused used in assaulting the deceased. On 23<sup>rd</sup> January 2020, post mortem was conducted to ascertain the cause of death of the deceased and the same was confirmed to be severe beating. On 6<sup>th</sup> February 2020, the accused person was charged with the offence of Murder which the state now substitutes to that of manslaughter.”*

5. Prosecution Counsel then produced the black cable whip, and the post-mortem Report dated 23/10/2020 referred to above 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. Muriithi** informed the Court that there were no previous criminal records relating to the accused hence he could be treated as a first offender, and also disclosed that the accused had “compensated” the family of the deceased. She however submitted that the attack was unprovoked, and led to loss of life, and that the deceased was a breadwinner, and as such, his family has suffered economically and psychologically. She then submitted that the murder occurred because the accused failed to manage his anger, and she thus proposed a sentence of 10 years imprisonment.
8. On her part, **Mr. Kosgey**, in mitigation, submitted that the incident occurred when the accused was protecting his rights to own property, and that the deceased was found red-handed. He urged that the accused has however sought to, and made amends with the family of the deceased by compensating them, and that the accused is also the sole breadwinner for his family. He also urged that the accused did not premeditate the act. He the prayed for mercy and leniency, and prayed that the accused be set at liberty or be given a non-custodial sentence, as the accused and the family of the deceased are also good neighbours to date. In responding to the Court’s inquiry, he stated that the accused had, before being released on bond, spent a period of about 1 month and 14 days in remand custody.
9. I then directed that a pre-sentence Report be prepared and filed, which was done. The Report, dated 9/02//2026, prepared by the Probation & Aftercare Service (Uasin Gishu County Office) indicated that it had been compiled after a review of the Court file and the police file, and upon interviews with, *inter alia*, the accused, his family, the victim’s family, the community at large, and the local administration both in the accused’s rural home, and in his Eldoret home.

### **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. 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.

12. 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. ....”**

13. 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. ....”**

14. With the above guidelines in mind, I have considered the manner in which the offence was committed, the circumstances whereof are that the accused and another unidentified person, jointly assaulted the deceased when the accused found the deceased red-handed, around midnight, stealing from the accused person’s farm by harvesting maize. It is reported that the stealing in the farm had been going on for some time, which prompted the accused to lay an ambush for 3 consecutive nights before he eventually nabbed the deceased. This therefore was a case of the accused administering instant justice, extra-judicially, after suffering a series of theft incidents in his farm. The accused may therefore be said to have to some extent, acted out of provocation.

15. I have also considered the contents, findings and recommendations of the Pre-sentence Report. The salient observations I make therefrom are that the accused has not had any history of delinquency or previous criminal behaviour, and that support from his family/siblings indicates a stable social environment conducive for his rehabilitation. The Report also confirms that the accused has since participated in traditional cleansing and made some compensation by way of delivering 10 cows to the family of the deceased, which act indicates remorse for his actions. The Report also reveals that the accused was born in 1970, which means that he is currently about 56 years in age. He is also said to be a trained teacher and has taught in various primary schools and even rose to the position of a head-teacher before joining the County Government as an education co-ordinator. He is said to have 4 children, the first 2 being university students, and that he also supports several other children in the community in terms of paying their school fees
16. Regarding the deceased and his family, the Report states that he was the last born in a family of 10 siblings, and he, too, was married with 2 school-going children. The Report also confirms that the two families, after holding meetings, had agreed that the case be withdrawn upon conduct of Kalenjin traditional cleansing, and that the families have since settled the matter amicably. It is therefore reported that the two families have both proposed a non-custodial sentence. The Report states that the local administration has verified and confirmed that the cleansing ceremonies and reconciliation meetings were convened, with the substantive meeting being attended by 33 members of the families. The local administration is said to also support the idea of a non-custodial sentence to enable the accused continue providing for his family. At the end, the Report proposes a 3-year probation sentence.
17. My own observation is that the accused is clearly remorseful for his actions which he obviously took out of anger, save that he went overboard. I also take into account the fact that he entered into the plea bargain agreement, and thus pleaded guilty to the lesser charge of manslaughter, and in the process, saving precious judicial time.
18. The above are no doubt, mitigating factors which ought to have a bearing on the sentence to be imposed.
19. There are however also notable aggravating circumstances. For instance, the post mortem report paints a grim picture of a vicious and violent attack as indicated by the severe injuries suffered by the deceased. The report, in describing the internal appearance of the body, categorized the condition as “*generalized massive subcutaneous haemorrhages*”, and the

cause of death as “*severe beating*”. The aggravation is made worse by the fact that, after inflicting the beatings on the deceased, which he did together with an accomplice, the accused put the deceased in his motor vehicle and drove him to an unknown place where he abandoned him, perhaps after more beatings. The indication is that the deceased was “dumped” around Ngeria area before he somehow managed to rise and find his way back home in the morning, albeit in bad condition healthwise, before he was taken to hospital where he died. It is therefore clear that the accused never even deemed it necessary to seek medical assistance for the deceased, but instead, chose to dump him at an unknown place late at night. It appears that the accused, realizing the condition of the deceased, deliberately abandoned him to die. It is very possible that the deceased might have survived had he obtained medical assistance in good time. Looking at the circumstances of the case, the accused clearly used unjustifiable and unnecessarily excessive force in assaulting the deceased.

20. Through a needless and rash action by the accused, a human life was lost and the Court must reiterate that it is not acceptable to take a human life extra-judicially, whatever the circumstances or level of provocation, not even upon catching a thief red-handed. The proper action is to take such suspect to the police or the local administration, and allow the law to take its course. There is no room for extra-judicial punishment of offenders in our justice system and the habit of “taking the law into one’s own hands” is not acceptable.
21. In the circumstances, I find that a non-custodial sentence would not be appropriate in this case. I will therefore impose a prison sentence save that the same will be a lenient one considering that, *inter alia*, the two families are said to have since reconciled and made amends, and he also submitted to plea-bargain. Although I have also taken into account the fact that the accused has “paid” some compensation to the family of the deceased, I must not send out the message that one can kill at will and go scot-free by merely compensating the survivors of the deceased he has killed. Such scenario cannot at all be accepted in any civilized society.
22. Regarding the period spent in custody by the accused, I note from the Affidavit filed by the State during the bail/bond hearing, that the accused was arrested on 19/01/2020. He was then granted bond whereof he secured release from custody pending trial. As the release order in the Court file is dated 10/02/2020, I presume this to be the date on, or about when he was released pending trial. The period spent in custody shall therefore be taken into account in computing the prison term to be served.

**Final Orders**

23. In circumstances, I make orders as follows:

- i) I hereby sentence the accused, **Willy Tirop Ngetich**, to serve **five (5) years** imprisonment.
- ii) As stipulated under **Section 333(2)** of the **Criminal Procedure Act**, the period already spent in remand custody by the accused, namely, 19/01/2020 to 10/02/2020, shall be deducted from computation of the period of imprisonment to be served.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 24<sup>TH</sup> DAY OF APRIL 2026**

.....  
**WANANDA JOHN R. ANURO**  
**JUDGE**

**Delivered in the presence of:**

**Appellant present physically in Court at Eldoret**  
**Mr. Gaylord for the accused person**  
**Ms. Muriithi for the State**  
**Court Assistant: Brian Kimathi**