



**Republic v Kimamet (Criminal Case E004 of 2023)
[2025] KEHC 576 (KLR) (30 January 2025) (Sentence)**

Neutral citation: [2025] KEHC 576 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE E004 OF 2023
RB NGETICH, J
JANUARY 30, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

CORNELIUS KIPKOECH KIMAMET ACCUSED

SENTENCE

1. The accused Cornelius Kipkoech Kimamet was charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code. The particulars of the charge were that the accused person on the 24th day of September, 2023 at Koisaram Sub-location in Kisanana Location of Mogotio Sub- County in Baringo County, unlawfully killed Daniel Kipkemoi.
2. The accused denied the charge and when the matter came up for hearing on the 14th June, 2024, the Prosecution Counsel Ms. Omari informed the court that she had been informed that the family of the victim and the accused were negotiating and on her part, she would wish to give negotiations a chance Mr. Nyachiro confirmed that was the position and asked for a mention a month’s time and on 16th September,2024, the prosecution counsel Ms. Omari informed court that the parties had fully reconciled and she had received minutes confirming reconciliation and compensation. The matter was fixed for plea on the 14th October, 2024.
3. On 14th October,2024, the accused pleaded guilty to the charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code and he was convicted on his own plea of guilty.

Brief Facts of the Case

4. Facts surrounding the offence are that on 24th of September 2023 at around 1430hrs, the accused Cornelius Kipkoech Kimamet was in the company of one Kevin Kimtai Cheruiyot aged 17years grazing cattle within the homestead of the accused in Ndabibi village Koisaram when the accused was



confronted and attacked by the deceased Daniel Kipkemoi who appeared drunk and was armed with a stick. The deceased who is a nephew to the accused hit the accused three times on the back before snatching his mobile phone after which he entered the accused's house in search of a panga and came out of the house while armed with a club and hit the accused on the head with the club. In the process, the accused grabbed the club from the deceased. On sensing defeat, the deceased started running away as the accused followed him in hot pursuit. Accused got up with the deceased and hit him on his right forehead causing a deep cut. The deceased fell and bled profusely. The accused who appeared confused due to the turn of events went into his house and came out while armed with a panga and a hammer.

5. Mercy Jeptanui Kibichii who witnessed the incident pleaded with the accused to stop hitting the deceased further and with the help of one Kevin, they moved the deceased to a shade and with Mercy then moved the deceased to a shade and looked for a motor cycle to take the deceased to hospital but unfortunately realized the deceased had already passed on.
6. Mercy called the area assistant chief Koisaram Sub-Location Boaz Kimamet and informed him of the incident. The assistant chief made a report on the same day at around 1800hrs at Kisanana police station. Officers from Kisanana police station and DCI officers from Mogotio visited and documented the crime scene before moving the body of the deceased to Nakuru Annex Hospital Mortuary awaiting post mortem.
7. The accused was arrested and escorted to Mogotio police station where he was booked and later arraigned in court for the charge of murder now reduced to manslaughter following a plea bargain.
8. On 29th day of September 2023 at around 1240hrs Post mortem was conducted on the body of the deceased by government pathologist Dr. Ngulungu Titus in the presence of close relatives of the deceased. The doctor formed the opinion that the cause of death was severe head injury attended by brain laceration due to a single penetrating puncture trauma to the head. The police file was compiled and the accused was charged with the offence of murder now reduced to manslaughter upon request for plea bargain. The court directed that a pre-sentence report to be filed before mitigation.

Mitigation

9. Ms. Odhiambo holding brief for Mr. Nyachiro counsel for the accused mitigated on behalf of the accused. She submitted that the accused is a first offender, he is a family man aged 34 years with one child and the bread winner of his family. She further submitted that the accused is respected in the community and he has been contributing to development projects in the community and the community has forgiven him. She prayed that the accused be granted another chance and prayed for a non-custodial sentence.
10. The prosecution counsel Ms. Omari submitted that she had looked at the report and it is favorable to the accused as the family of the accused and the victim have reconciled. She further submitted that from the facts, it was clear that the deceased provoked the accused and since the families have reconciled and the report is favorable, she leaves the aspect of sentence to the discretion of the court.

Pre-sentence Report

11. From social inquiry, the offender was born in 1999 in Dabib village, Kisanana Location in Mogotio Sub-County. He joined Kisanana primary school in 1998. He sat for KCSE and obtained D Plain. He started doing casual jobs for one year and in 2011, he was employed in a butchery for one year before joining a security guard farm in Menengai Geothermal office where he also worked for two months. He returned back home to do farming up until the date of his arrest. He is married with one child aged 6 years old.



12. From the report, the offender and the victim were great friends and lived in harmony for many years. Further, the offender is a committed member of the community in Dabib relief food secretariat and a member of a cattle dip in the village and has no known records of crime in the family and lived in harmony with people.
13. The offender admits the offence and attribute his actions to anger and provocation and deeply regrets allowing his emotions to make him engage in action which led to death of deceased. He is remorseful and recognizes the gravity of his actions especially in causing the loss of a family member.
14. The victim's mother stated that the family has forgiven the offender and stated that the two families had three sittings where they resolved to forgive each other. She pointed out that the two families are related and needed to live in harmony hence has no ill motive concerning the offender. Her wish is for the offender to be granted a non-custodial sentence.
15. The local administrator indicated that the offender is a well-known person with good character in the area. The accused is an elder brother to the administrator hence knows him well. He stated that the offender had no issue in the community and was a trustworthy person who was involved in the development project as a committee member in Dabib relief food and also a member of committee in a cattle dip.
16. Social inquiry revealed that the accused and the deceased were under the influence of alcohol at the time of the incident hence it was not clear what happened.

Determination

17. Under section 205 of the Penal Code a person convicted of Manslaughter is liable to imprisonment for life. However, in Malindi Criminal Appeal No. 12 of 2021 between Julius Kitsao Manyeso vs Republic the Court of Appeal declared life imprisonment unconstitutional.
18. I have taking into consideration sentiments by the community, victim's family and local administration. Circumstances of the offence show that the accused was provoked by the deceased. From the Probation Officer's report, the deceased was the aggressor and as a result the accused acted out of anger and used excessive force that unfortunately caused the death of the deceased. There is no doubt that the incident was unplanned. The accused has demonstrated remorse. Both the accused and deceased's family have reconciled and they propose a none custodial sentence for the accused. In view of the above, I find non-custodial sentence appropriate for the accused
19. Final orders: -
Accused to serve 3 years' probation sentence.

RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 30TH DAY OF JANUARY 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

Karanja, Court Assistant.

Accused present.



Ms. Omari for State.

Ms. Odhiambo holding brief for Nyachiro for accused.

