



**Republic v Bundotich (Criminal Case 49 of 2023)
[2025] KEHC 1216 (KLR) (27 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 1216 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 49 OF 2023
RB NGETICH, J
FEBRUARY 27, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MICHAEL KIPSAMBU BUNDOTICH ACCUSED

SENTENCE

1. By judgement delivered on the 30th day of September, 2024, this Honourable court found the accused Michael Kipsambu Bundotich guilty and convicted him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.

The particulars of the charge were that the accused on the 10th day of October, 2017 at Sore Village, Sirwa Location in Mogotio Sub- County within Baringo County murdered Victor Kimetto.

2. On 27th September, 2024, the prosecution urged the court to have the accused treated as a first offender as he had no previous criminal records. The court directed that a pre-sentence report to be filed before they submit on mitigation.

Pre-sentencing Report

3. From presentence report, the accused did not proceed with education after sitting for Kenya School of Primary Education (KCPE) due to lack of fees and out of his own volition. He then engaged in odd jobs and at the time of his arrest, he was working as a herder in Mogotio. The accused was once married with one child aged 8 years. The child lives with the accused's parents. The father of the accused indicated that they are yet to pursue reconciliation with the family of the victim but they plan to do so after the case has been finalized in court. He prayed for a non-custodial sentence for the accused and as a family they are ready to assist the accused in his rehabilitation within the community. He attributes the accused's actions to alcoholism.



4. The accused stated that he was drinking with the deceased when an argument ensued after failing to agree on how to share 5 litres of Busaa. Following the disagreement, a fight ensued and as a result, the accused cut the victim inflicting injuries which led to the death of the deceased. The accused admitted cutting the deceased and says he acted out of self defence. He confirms that he has not reconciled with the family of the victim. He prays for non-custodial.
5. The victim in this matter was previously serving as a police officer in the General Service Unit but he was dismissed from the service. He returned home where he was practicing farming until the time of his death. He was single and he did not have any children.
6. The brother of the victim indicated that neither the accused nor his family have reached out to say sorry or seek reconciliation despite the fact that the accused has been out on bond. As a family they doubt if the family of the accused will seek reconciliation once the case is concluded and therefore, they strongly oppose a non-custodial sentence for the accused and they pray that he is sentenced to serve a custodial sentence so as to serve justice to them for the loss of the victim.
7. The local administration of where the accused hails from indicated that the accused and his extended family are well known to them because they are known to have a habit of threatening others and being violent especially when matters of land are involved. The family has been described as being complicated and problematic thus the local administration doubt whether they will even pursue reconciliation with the family of the victim. They further added that the family cannot be relied upon to assist in the rehabilitation of the offender within the community.
8. The local administration opposed the accused being released on non-custodial sentence arguing that custodial sentence will act as deterrent and push the family to become law abiding and avoid causing violence within the community.

Mitigation

9. The defence counsel Mr. Kiptoon mitigated on his behalf. He submitted that the accused is a first offender and from a humble background and is remorseful. He urged this court to consider the period accused was in remand and prayed for a lenient sentence so that he can go back to the community and serve the nation. The prosecution counsel Ms. Bartilol urged this court to exercise discretion in passing the sentence.

Determination

10. Under Section 205 of the *Penal Code* a person convicted of Manslaughter is liable to imprisonment for life, however the court in Malindi Criminal Appeal No. 12 of 2021 between *Julius Kitsao Manyeso v Republic* declared life imprisonment unconstitutional.
11. From the presentence report, it is clear that the family of the accused and that of the deceased have not reconciled. The accused's father stated that they will pursue reconciliation after this case has been finalized in court. The family of the accused prays that the accused be granted a non-custodial sentence. The victim's brother indicated that neither the offender nor the family have reached out to say sorry or seek reconciliation despite the fact that the offender has been out on bond and as a family they doubt if the family of the offender will seek reconciliation once the case is concluded and they therefore strongly oppose a non-custodial sentence and pray for custodial sentence so as to serve justice for them for the loss of the victim.
12. The community also indicate that the accused has a habit of threatening others and being violent especially when matters of land are involved and are opposed to non-custodial sentence and pray for



a custodial sentence so as to serve as deterrent and push the family to become law abiding and avoid causing violence within the community.

13. I have considered sentiments given by people interviewed and circumstances surrounding the offence; I also take note of the fact that the offence was not planned and the fact that the accused is remorseful and a first offender. However, in view of the fact that there has been no reconciliation between the family of accused and family of the victim, and there is negative report from the community and local administration concerning the accused, I find it appropriate to impose a custodial sentence so as to deter the accused and would be offenders from committing other offences.
14. Final Orders: -
 1. The accused to serve 20 years imprisonment.
 2. Sentence to run from the date of arrest.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 27TH DAY OF FEBRUARY 2025.

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RACHEL NGETICH
JUDGE

In the presence of:

Ms. Bartilol for State.

Accused – present.

Court Assistants – Elvis/Momanyi.

