



**Syombua v Republic (Criminal Case E029 of 2021)
[2024] KEHC 956 (KLR) (26 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 956 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE E029 OF 2021
TM MATHEKA, J
JANUARY 26, 2024**

BETWEEN

DENNIS MUSAU SYOMBUA ACCUSED

AND

REPUBLIC PROSECUTOR

JUDGMENT

1. Dennis Musau Syombua was charged with Murder c/s 203 as read with s. 204 of the Penal Code. It was alleged that on the 25th November 2021 at Kikima Shopping Centre Mbooni West Sub County within Makueni County murdered Mumo Kioko Syombua.
2. He pleaded not guilty on the 24th January 2022
3. One witness testified before Hon Dulu J on the 21st September 2022.
4. On 9th May 2023 when the matter came before me I was informed that the deceased was a brother of the accused person and the family had met towards a plea agreement.
5. On the 11th August 2023 the court was told that there was the parties had entered into a plea agreement and the accused had agree to plead to the lesser charge of manslaughter c/s 202 as read with s. 205 of the Penal Code.
6. On 24th October 2023, after complying with the law on Plea Agreements and satisfying myself that the accused person entered into the same well aware of what he was doing and the circumstances of the same, the agreed charge was read over and explained to him in Kiswahili and he pleaded guilty.
7. The facts were read to him: That on the 25th November 2021 at 8:00pm the accused who was very drunk entered Pentagon bar at Kikima where his girlfriend one Naomi Mwelu was working. The accused was carrying a metal bar and a knife. He asked Naomi to come from behind the counter so that they could talk. Naomi refused, locked herself inside. It was at that time that his brother Mumo



Kioko Syombua now deceased came to the counter. He had a girl whom he had left outside. He asked Naomi if there was a room available. Naomi told him yes there was a room available. Before he could pay, the accused grabbed him and demanded to know what he was talking about with Naomi. A fight broke out. Accused hit him with the metal bar. Mumo ran out and accused followed him. The fight continued outside and one Mwanzia Kioko the owner of the bar rushed to the boda boda stand to get help only to come back and find Mumo in a pool of blood and the accused had disappeared. Naomi rushed to Mbooni Police Station and made the report. Cpl Ouma rushed to the scene and found the deceased in a pool of blood. Other Police Officers came and found the deceased in a pool of blood. The accused was traced to his house. Blood stained clothes were recovered but not the knife or metal bar. The accused was escorted to Mbooni Police station. The scene was secured; the body of the deceased was escorted to the Mortuary at Mbooni S/County Hospital. The Postmortem was conducted. It revealed that cause of death was cardiovascular failure due to massive blood loss. The accused was charged with murder which was substituted with manslaughter on plea agreement.

8. The accused pleaded guilty to the facts and was convicted on his own plea of guilt.
9. A presentence report was filed by PACS. In mitigation counsel Mr. Judah Kioko for the accused submitted that the accused was 28 years old, remorseful and regretted the incident that led to the death of his brother. That his family was ready to accommodate him and enroll him for a course in driving and mechanics. He sought a non-custodial sentence.
10. The Prosecution through Mr. Tanui submitted that the court could consider the report and determine a fair sentence.
11. The only issue for determination is what is the appropriate sentence in the circumstances of this offence.
12. The pre-sentence report demonstrates that the accused hails from a family of 8 siblings of a single mother. The deceased was his follower – as he is the 4th and deceased was the 5th born. The accused has anger and aggressions issues that have been identified by the family and the community at large. The family and the clan are ready to take him back and the PACs recommends a non-custodial sentence.
13. The record shows that he has been in custody since 24th January 2022.
14. S. 205 of the Penal Code provides that for manslaughter a person is liable to life imprisonment. This has been translated to 30 to 40 years in recent jurisprudence. In the circumstances of this case the accused would have served a term of 8 years' imprisonment. This is because it is important that even as the family accepts him back the accused person gets the opportunity to understand that indeed what he did is punishable by law. He was unprovoked by his brother and went on to “remove” his stress over the rebuff by his girlfriend on him.
15. However, taking into consideration the plea agreement, I find that the following would be an appropriate sentence.
 - a. Accused to serve 4 years' imprisonment with effect from the date of his remand in custody: 16th December 2021.
 - b. Considering the presentence report, upon completion of his imprisonment to be placed on probation supervision for 2 years to enable his reintegration and rehabilitation back to family and society
 - c. While in custody Probation and After Care Services Makueni to work hand in hand in hand with Prison authorities to ensure a smooth transition to Probation Supervision.



16. Orders Accordingly

17. For compliance, the Orders be served upon Probation and After Care Services Makueni and the Officer in Charge Makueni GK Prison who will ensure it is transmitted to any other Officer in Charge of GK Prison should the offender be transferred.

18. Right of Appeal Explained

DATED, SIGNED AND DELIVERED VIRTUALLY THIS DAY OF 26TH JANUARY 2024

MUMBUA T MATHEKA

JUDGE

CA Nelima

Accused present

Mr. Judah Kioko for the accused

Mr. Tanui for State

