



**Republic v Birir (Criminal Case 7 of 2023) [2024] KEHC 463 (KLR) (25 January 2024) (Sentence)**

Neutral citation: [2024] KEHC 463 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDAMA RAVINE  
CRIMINAL CASE 7 OF 2023  
RB NGETICH, J  
JANUARY 25, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SHADRACK KIPKURUI BIRIR ..... ACCUSED**

**SENTENCE**

1. The accused person Shadrack Kipkurui Birir had been charged with the offence of murder contrary to section 203 as read with Section 204 of the *Penal Code*. The particulars of the charge being that the accused on the night of 1<sup>st</sup> January, 2019 at Kaplelingor village, Poror Arama Sub-location, Lembus Location in Koibatek Sub- County within Baringo County unlawfully killed Evans Kipkoech Komen.
2. However, when the matter came up for Hearing on the 27<sup>th</sup> April, 2023, the accused informed the court that he would wish to reconcile with the family of the deceased. The court directed the Accused's Advocate to make a formal application for plea bargain.
3. On the 19<sup>th</sup> October, 2023 the plea agreement was duly executed and the charge reduced to manslaughter. On 13<sup>th</sup> day of November, 2023, the charge of manslaughter as provided for under section 202 as read with section 205 of the *Penal Code* and its full particulars were read over and explained to the accused who pleaded guilty and was convicted on his own plea of guilty.

**Brief Facts of the Offence**

4. The brief circumstances surrounding this case are that on the night of 1<sup>st</sup> January 2019, the deceased Evans Kipkoech Komen went to join Shadrack Kipkurui Birir, the accused herein to celebrate the New Year's Eve but never returned back.
5. On the 2<sup>nd</sup>, January 2019 Hillary Kiptanui Komen started looking for the deceased. He went to Erick Kipngetch Birir to look form him but he responded to the negative. He requested Eric to take him to where the accused used to brew chang'aa and also asked him to give him phone numbers of the



accused herein, which he did. On reaching where Hillary was, he asked him whether he had seen the deceased Evans Kipkoech (deceased) but the accused never answered. Hillary moved closer to the river where the accused was and greeted the accused who responded by saying “your dead brother is there” while pointing and showing him where the body of the deceased was. As Hillary went to confirm, the accused ran away into the bush. Hillary went to inform the family members and the police.

6. The accused later called Eric to confirm if police had gone to the scene to collect the body and when he was told the body had not been collected, he said he would call later but he did not call. Police visited the scene and body was photographed and taken to Eldama Ravine Sub-County Hospital, mortuary and investigations commenced.
7. On investigations, and upon recording witness statements, one Joseph Kiplangat Ruto indicated that he was with the deceased and that the deceased had disagreed with the accused over kshs 200 which the accused owed the deceased and in the process of asking for his money, the accused started beating the deceased by use of fist and later hit him with a rungu on the head. As a result of the violence the said Kiplangat went to his home.
8. On 8<sup>th</sup> January a post mortem was done at Eldama Ravine Sub-County hospital by Dr. Marin who formed the opinion that the cause of death was as a result of severe blunt head injury plus hemothorax and hemoperitoneus secondary to blunt force to the abdomen chest and head.
9. The police file was compiled and the accused charged with the offence of murder now reduced to manslaughter following plea bargain.

### **Pre-sentence Report**

10. On the 19<sup>th</sup> October, 2023 the court called for a pre-sentence report to be prepared which was filed on the 14<sup>th</sup> November, 2023. From the report, the accused was born in the year 1989 at Poror Arama sub location in Lembus Location. He dropped out of school after class 8 due to financial challenges. He later engaged himself in casual jobs. He was married to one Sheila Chemngeno and they had two children aged about 6 and 2 years respectively. The wife however separated from the accused person after his arrest. The offender admitted that he was involved in Manufacturing and selling illicit brew prior to his arrest.
11. The report reveals that the accused person admits the charge. He stated that the two differed when the late victim failed to pay for illicit brew sold to him by the accused person. They got engaged in a fight. The accused person overpowered the late victim who was drunk and pushed him. The late victim fell on a tree stump thereby injuring his head and neck. Thereafter, the late victim succumbed to the injuries. He prays to the court for leniency stating that he did not intend to kill the late victim. He regrets his action which he attributes to uncontrolled anger.
12. The family members confirmed that the accused was involved in the manufacturing and sale of illicit brew. The mother shared that she had prevailed upon him to abandon the illicit business but the offender did not yield.
13. The family members of the deceased were saddened by the loss of their kin. The mother and the brothers to the late victim stated that they had suffered psychologically as a result of the death of the deceased. The mother further said they are suffering financially since she no longer does her business in Eldama Ravine but remain home to look after livestock and engage in farm work which was being done by the late victim.



14. The deceased's family stated that the family of the accused have never approached them to ask for forgiveness on behalf of the offender as the accused has continued to deny the offence but they have however related well with accused's other relatives as they are not to blame for accused's action.
15. The area administrator described the offender as a notorious dealer of illicit brew in the area. He confirmed that reconciliation talks had not taken place between the two families since the offender had insisted that he did not commit the offence but confirmed that despite absence of reconciliatory talks, the two families had continued to co-exist peacefully.
16. The probation officer's view is that in view of the fact that there is no reconciliation, home environment is currently not conducive for reintegration of the offender into the community.

### **Mitigation**

17. The defence counsel Mr. Mongeri mitigated on behalf of the accused. He submitted that the accused is remorseful, he regrets his actions over trivial disagreement concerning alcohol which he was selling. He further submitted that the convict is a family man and a casual laborer and at the time he was arrested, he had 2 children and the wife separated from him upon being arrested. Counsel submits that the accused is taking care of his children who are school going. He stated that the accused has been in custody since 2019 a period of 5 years and urged the court to consider that period.
18. Defence counsel submitted that the deceased's family have no issue with the accused save that they have not reconciled since he has been in custody and there was no communication with him. He prayed that the accused be granted a non-custodial sentence. He urged court to consider the period of 5 years he served in remand as sentence and he be allowed to join his family.

### **Submission By State**

19. The prosecution counsel Ms. Ratemo submitted that part of what counsel has said concerning reconciliatory talks is not true. She submitted that it is clear the offender has never approached the family of the victim to ask for forgiveness. She submitted that it is true that the accused has been in remand but has never send his family to discuss with the family of the victims on possibility of forgiveness.
20. She submitted that the conduct of the offender is also well stated in the report, his mother stating that he prevailed upon him to stop the business of illicit brew but he continued. That the manner in which the deceased died, it could have been a fight but it could be avoided. She submitted that the victim's family depended on the deceased for financial assistance as he was the only bread winner of the family.
21. That the views of the area administrator are also worth noting. That they indicated that the accused has been notorious illicit brewer in the area and the accused has also admitted that he had an uncontrolled anger and it is important that he be granted custodial sentence so that he can be assisted to control his anger.
22. That from the report, the atmosphere for reconciliatory talks is not conducive despite the fact that the two families have been existing peacefully. That the deceased had children and his life was cut short at the age of 34 years. Prosecution counsel proposed a sentence of 40 years imprisonment in view of the injuries sustained by the deceased which were aimed at his head.



## Determination

23. Under section 205 of the [Penal Code](#), a person convicted of Manslaughter is liable to imprisonment for life. However, life sentence was declared unconstitutional by the court of appeal in Malindi Criminal Appeal No. 12 of 2021, [Julius Kitsao Manyeso Versus Republic](#).
24. I have considered mitigation by accused through his Advocate. I have also considered sentiments of the two families herein and local Administration and it is not in dispute that the two families herein have not reconciled in view of the fact that accused has not admitted the offence and is not therefore remorseful. I also take note of the fact that the accused was involved in brewing and sell of illicit brew which gave rise to the offence herein. In my view, the accused deserves custodial sentence as it will give him opportunity to learn a skill which will enable him engage in economic activity to earn income to support his family and desist from illicit brew business. I also find that the accused is entitled to reduction sentence by the period he served in remand.
25. Final Orders: -
1. Accused to serve 10 years imprisonment.
  2. Period served in remand to be reduced from the sentence herein.

**RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 25<sup>TH</sup> DAY OF JANUARY 2024.**

.....  
**RACHEL NGETICH**  
**JUDGE**

In the presence of:

Elvis - Court Assistant.

Ms. Ratemo - Counsel for state.

Accused present.

