



**Republic v Kimeto (Criminal Case 9 of 2023)
[2024] KEHC 495 (KLR) (25 January 2024) (Sentence)**

Neutral citation: [2024] KEHC 495 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 9 OF 2023
RB NGETICH, J
JANUARY 25, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

NAHASHON KIMUTAI KIMETO ACCUSED

SENTENCE

1. The accused Nahashon Kimutai Kimeto was charged with the offence of murder contrary to section 202 as read with section 205 of the [Penal Code](#). The particulars of the charge was that the accused on the 028th day of May 2021 at around 1830 hours at Esageri shopping centre within koibatek sub county within Baringo county, the accused unlawfully killed James Kibet Changwony.
2. On 24th February 2022, the defence counsel Mr. Nyagaka informed the court that they wished to engage in plea bargain. On 19th October, plea agreement was executed reducing the charge to offence of manslaughter and the lesser charge of manslaughter and its full particulars were read over and explained to accused who pleaded guilty and was convicted accordingly.

Brief Facts Of The Case

3. Brief facts as stated by the prosecution counsel are that on 28th may 2021 at around 6.30 pm at Esageri shopping centre one Vincent Kipkurui who was eating outside Kamaruso hotel saw the accused who was armed with a rungu and a knife hit the deceased herein with a rungu on the head. The incident was also witnessed by one Agnes Chesire who was seated outside the hotel. One Betty Kosgey also responded to screams at the scene and found the deceased lying on a pool of blood. Police were informed. They visited the scene and recovered the murder weapon a rungu and the body of the deceased was taken to Nakuru PGH.



Presentence Report

4. Presentence report was filed by probation officer on 14th November 2023. From presentence report, the accused indicate that he did not intend to kill the deceased but was acting in self defence. He attributes his action to provocation. The accused's family say the accused was a friend to the deceased and the two had indulged in illicit brew and could not rule out drug and substance abuse.
5. The victim's family indicated that the victim left behind 3 school going children the first born being in form 3 and the other two in primary school and the wife of the deceased passed on earlier. They further indicate that the deceased had history of criminality and had been charged, convicted and imprisoned for the offence of murder. The deceased's family confirmed that the deceased and accused were close friends and were related by marriage.
6. The local administrator indicates that the victim and accused were well known in the trading centre and were occasionally disorderly while drunk and the two families have maintained harmonious co-existence before and after the offence.

Mitigation

7. The defence counsel Mr. Nyagaka mitigated on behalf of the accused. He submitted that the accused is very remorseful for the events of 28th May, 2021. That the accused being the 1st born in a family of 4 siblings is the one taking care of his parents and prays for a non-custodial sentence to enable him complete his studies at Jomo Kenyatta University where he is studying. He submitted that the accused was involved in an accident and broke the right knee and he has plate fixed on the leg and prays for a non-custodial sentence.
8. Defence counsel submits that the ground is not hostile at his home and they are ready to receive him. That he never intended to kill the deceased and accused's family have reconciled with deceased's family. That the accused is 30 years old and he has learnt from his parents that he has a girl-friend with a child and if given a non-custodial sentence, he may lead a normal life of being a parent.
9. Counsel submitted that he is also adopting the probation officer's report and urged the court to go through the pre-sentence report and consider his mitigation.

Determination

10. Section 205 of the *Penal Code* provide penalty of life imprisonment for the offence of manslaughter. The sentence was however declared unconstitutional by Malindi Court of Appeal Criminal Appeal No. 12 of 2021, Julius Kitsao Manyeso Versus Republic.
11. In view of the above, I have considered circumstances of the offence herein and the fact that the parties herein executed plea agreement. I also take note of the fact that accused is a first offender and is remorseful of the offence. He is also a young man now aged 30 years. From the presentence report, the accused and the victim were involved in taking illicit brew and the victim had committed offence of murder before. Accused said he was defending himself from the deceased and killed him in the process. Both families confirm that the accused and deceased were friends who took illicit brew and would involve themselves in disorderly conduct.
12. In view of the above, I am of the view that the accused deserves a lenient custodial sentence as it will give him opportunity to learn skill that will help him earn a source of income to support his family and desist from engaging in criminal activities. In view of the above I am inclined to impose a lenient custodial sentence.



Final Orders: -

13. ...

1. Accused to serve 5 years imprisonment.
2. Period served in remand to be reduced from the sentence.
3. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 25TH DAY OF JANUARY 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

Elvis - Court Assistant.

Ms. Ratemo - Counsel for state.

Mr. Nyagaka - Counsel for accused.

