



**Republic v Rotich (Criminal Case 80 of 2017)
[2024] KEHC 467 (KLR) (25 January 2024) (Sentence)**

Neutral citation: [2024] KEHC 467 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 80 OF 2017
RB NGETICH, J
JANUARY 25, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

PATRICK ROTICH ALIAS LUKA ACCUSED

SENTENCE

1. The accused person Patrick Rotich alias Luka 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 diverse dates between 1st April,2017 and 6th April,2017, at Endao Sub-location within Baringo South Sub- County in Baringo County the accused unlawfully killed Stephen Rotich Boit.
2. The Accused denied the charge. However, when the matter came up for Mention on the 22nd March, 2023, the defence counsel Mr. Mwaita informed the court that they wished to pursue plea bargaining and had sent their request to the DPP. On the 22nd May, 2023, plea agreement was duly executed. The charge was reduced to manslaughter following a plea-bargaining agreement.
3. On the 11th July, 2023, the charge for manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#) and its 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. On the 1st day of April, 2017 at about 2000hrs, the deceased one Stephen Rotich Boit went to buy flour from accused’s kiosk but found the kiosk closed. He went to knock accused’s door. The accused asked him what he had gone to do at his homestead at that time of the night. He attacked him causing injuries on his head. The deceased ran away from the accused while raising alarm which attracted a neighbor one Elijah Barsang Kaprimet.



5. The deceased informed Elijah that he had been assaulted by accused Patrick Boit alias Luka. As they were still talking, the accused moved close to them and said he was going to pick a bow and arrow and if he comes back, he will kill somebody. He went back and armed himself with a bow and arrow and despite Elijah trying to stop him from attacking the deceased, he shot at the deceased with the arrow injuring his left rib. Simon Kipsemoi Kitilit was informed of the shooting. Simon called Rashid Chepsom a Boda boda rider. They took the deceased to Marigat sub county Hospital for treatment. By this time, Elijah Barsang had removed the arrow stick but the arrow head was still stuck in the ribs of the deceased. The arrow was removed at Marigat hospital, the same night. Accused was arrested on the 2nd day of April 2017 and handed over to the police at Marigat police station.
6. They also handed over the bow and the arrow removed from the deceased's body to the police. The accused was charged with the offence of assault causing actual bodily harm at kabarnet law court vide court file no. 232 of 2017. The deceased was referred to Kabarnet county Referral hospital for scanning and to Moi Teaching and Referral Hospital Eldoret for further treatment. On the 6th day of April 2017, the victim succumbed to the arrow injuries and the accused was charged with the offence of murder.
7. Postmortem performed on the 21st day of April 2017 by Dr. K Keitany, who filled and signed the postmortem form which produced in this court as exhibit.

Pre-sentence Report

8. The court called for presentence report which was filed on the 3rd November, 2023. From the report, the accused had a normal childhood and he attended formal education up to form 4 and attained D (plain) in KCSE. He then started working in a posho mill within Marigat town, and later in a hotel before setting up his own business in Marigat where he sells fruits. He is married to one Nelly Rotich and they are blessed with 6 children who are in school between Grade 3 and form 2. The family relies on the business ran by the accused so as to provide for the family.
9. The accused is remorseful. He attributes the offence to alcoholism. He prays for forgiveness from the family of the victims and leniency from the court. He pleads for a non-custodial sentence so that he can continue providing for his family.
10. The local administration is not opposed to non-custodial sentence on ground that the two families have been reconciled. They describe the accused as being of good conduct and has no problem with him returning to the community as he maintains peace and observes what the elders have decided as part of reconciliation while back.
11. The family of the offender indicated that as a family they believe the offender did not intend to kill the victim but was under the influence of alcohol and did not recognize him when he woke up after the deceased taking his mobile phone. They indicate that reconciliation meeting took place on the 22nd of October 2023 and they agreed 11 cows to be paid by the family of the offender to the family of the victim; and on that specific day, the family of the offender paid two cows with the remaining 9 to be paid at a later date which they all agreed upon. The family therefore prays that the offender be sentenced to serve a non-custodial sentence.
12. The family of the victim confirmed that they had reconciliatory talks, they have forgiven accused and are not opposed to a non-custodial sentence. They look forward to peace and harmony between the two families.



Mitigation

13. The defence counsel Mr. Mwaita mitigated on behalf of the offender. He submitted that the convict is remorseful for the offence and has conveyed his apologies to the family of the deceased and also apologizes to court. That he is 44 years old, married and blessed with 6 children and one of the children is disabled and the last-born experiences chest congestion during cold weather. That the convict is a first offender and is requesting for lenient sentence and if possible, a non-custodial sentence. He further submitted that the two families have agreed to forgive him and he has accepted to compensate them as per Tugen culture and 3 cows have been given out remaining with 6 cows will he will give out gradually.

Determination

14. Under section 205 of the Penal Code a person convicted of Manslaughter is liable to imprisonment for life. However, the court is at liberty to impose a lesser sentence depending on circumstances of each case.
15. The facts of the offence and presentence report reveal that the deceased and the offender were friends and were both drunk on the material day. Further, the deceased picked the offender's mobile phone while he was sleeping which prompted him to quickly wake up and pursue the Deceased and injured him before fully recognizing him
16. The Court has considered the accused's mitigation that he is remorseful of his action which resulted in lose of life. The two families have however been reconciled and are comfortable with non-custodial sentence. Compensation has partly been done and the two families are living peacefully. In view of the above, I am inclined to impose a non-custodial sentence.
17. Final Orders: -
1. The accused is placed on 3 years' probation sentence.
 2. 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.

Accused present.

