



**Republic v Ngemi (Criminal Case E005 of 2021)
[2024] KEHC 3219 (KLR) (26 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 3219 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL CASE E005 OF 2021
MW MUIGAI, J
MARCH 26, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

COSMOS MUEMA NGEMI ACCUSED

JUDGMENT

1. The Accused person Cosmas Muema Ngemi was charged with murder c/s 203 & 204 of the Penal Code.
2. The particulars were on 4th February 2021 at Kavunyu Village, Kamwala Sub location, Mwala Location Mwala Sub County within Machakos murdered Mutuku Kaloki.
3. The Information /charge was read to him on 18/2/2021 after mental assessment Report declared he was fit to plead and the accused person pleaded not guilty.
4. The bond/bail applications were made by Accused Person’s Counsel and were granted but the Accused person remained in custody.
5. For various reasons as depicted on the Court record, the hearing did not take off.
6. On 4/5/2022, the Defense and Office of Public Prosecutions informed the Court that they were engaged in Plea- Bargaining negotiations.
7. On 2/7/2023, the DPP filed the Plea- Bargaining Agreement. By the Agreement between the parties, the Accused person concede to a fresh charge of manslaughter, in substitution for the information of murder dated 15/2/2021.



8. The fresh information of manslaughter dated 2/7/2023 signed by ODPP's Mr. Mwangera, Prosecution Counsel and the Accused person, Cosmas Muema Ngemi and Defense Counsel, Mr. D. K. Muema.
9. The offence of manslaughter is prescribed by Section 202 as read with 205 of the Penal Code.
10. On 7/11/2023, the Accused person was read the substituted charge of manslaughter and he admitted the charge; knowingly, voluntarily and truthfully.
11. The Prosecution Counsel; Mr Mwangera read out the Facts to the Accused Person who admitted the facts. A plea of guilty of the substituted charge was entered for the Accused person.
12. The Prosecution Counsel; Mr Mwangera informed the Court that he obtained Consent to Plea bargain Agreement & terms from the County ODPP Incharge; written Consents from the Investigation Officer & Family of the deceased.
13. The matter was adjourned to await Probation Officer's Pre-sentence Report, the Accused previous record, the Victims Impact Statement/Family report or statement.
14. On 5/3/2024, the Pre -Sentence Report/ Probationer's Report filed on 29/11/2023 was presented to Court and was favorable and recommended a non- custodial sentence for the Accused person.
15. The Clan Agreement of 9/2/2024 was presented on 9/2/2024 and the Head of Clan Mr. Dominic Kyuli Katiku and he testified he represented the clan of the Accused person and the clan of the deceased was represented by Simon Wambua Kioko, the deceased's Uncle and Catherine Ndunge Mutuku widow of the deceased, testified and confirmed voluntary negotiations and agreement to settle the matter of the deceased's death through plea bargaining and that they were not coerced, intimidated or threatened.
16. In the Pre-sentence proceedings of 7/3/2024, on behalf of the Accused, Prosecution Counsel stated that the Accused person was 1st Offender. The Prison Authorities confirmed the accused person was remorseful and had rehabilitated as shown by Certificates of Conduct and Christian Fellowship Certificate.
17. The Accused person's Advocate; Mr. D.K. Muema confirmed blood compensation negotiated agreed and paid to the family of deceased as per the Agreement presented to Court on 9/3/2024. The Accused person was in custody for 3 years. He is a family man with wife and 3 children and taking care of a medically challenged mother. The accused was sick in custody and required treatment. The circumstances warranted a non-custodial sentence.
18. The Court carefully perused the Plea Bargain Agreement and the agreed facts are that on 4/2/2021 at 7.30 pm the Accused person and deceased were taking beer at a Bar in Kavunyu within Mwala Location. In the course of merry making, a quarrel ensued between them and the wrestled, the Accused wrestled the deceased to the ground. The deceased fell and hit a hard surface on the door steps of the bar and the Accused person continued fighting the deceased hitting him severally with an empty beer bottle and the deceased was unconscious. The deceased was rushed to hospital in Mwala by his brothers and was declared dead on arrival.
19. The post mortem performed at Machakos Hospital confirmed the deceased died from head injury secondary to blunt force trauma.



20. The Accused person turned himself in and surrendered to Police on 6th February 2021 at Masii DCI Office. The Accused person was charged with the offence of murder which through plea bargain was reduced to manslaughter.
21. The ODPP recommended custodial sentence of 5 years imprisonment and the Accused Person's Advocate recommended 3 years non-custodial sentence.
22. This Court is satisfied the Plea Agreement was voluntary as the Accused person took plea in Court and admitted the reduced charge. The facts were read to him in Court and he admitted the facts. The Court asked the Accused if he was coerced influenced or intimidated to plea bargain and informed Court it was voluntary. The accused was within his rights as spelt out by Section 137 CPC and therefore plea bargained to the lesser charge of manslaughter
23. From the facts, the accused person's commission of the offence was not premeditated as the brawl ensued during a drinking spree at the Bar and resulted in fighting and the deceased sustained head injuries and succumbed to his death.
24. This Court considered the totality of the circumstances as spelt out in the Plea Bargain Agreement, the Accused person confessed and pleaded guilty to the charge of manslaughter to the deceased/victim, he reported and surrendered to the Police, he is a 1st Offender, the victim's family through clan/family discussions have settled the matter as shown by Agreement of 9/2/2024.
25. Therefore, this Court sentences the Accused person to 5 years imprisonment from the 1st date of remand in custody 18/2/2021 considering the statutory remission provided by Section 46 of Prisons Act which means he has served 3 years imprisonment to date.
26. The balance of 2 years imprisonment shall be non- custodial as recommended by the Probation Officer's Report presented to Court on 9/11/2023.
27. The terms of non-custodial sentence/Probation include adherence of the terms of Probation as required by Probation Officer in default or any other commission of offence/brush with the law(unlawfulness) shall automatically terminate Probation and instead the Accused shall serve the remaining 2 years imprisonment in custody.

JUDGMENT ON PLEA BARGAIN DELIVERED SIGNED & DATED IN OPEN COURT IN MACHAKOS HIGH COURT ON 7/3/2024 (VIRTUAL/PHYSICAL CONFERENCE).

M.W.MUIGAI

JUDGE

IN THE PRESENCE OF

COSMAS MUEMA NGEMI- ACCUSED PERSON

MR D.K.MUEMA ADVOCATE FOR ACCUSED PERSON

MR MWONGERA FOR ODPP

MR GEOFFREY & PATRICK - COURT ASSISTANTS

(JUDGE BEREAVED)

JUDGMENT ENCLOSED IN THE COURT FILE & RELEASED TO REGISTRY ON 26/3/2024.

M.W.MUIGAI

JUDGE



