



**Republic v Lengoiboni (Criminal Case E027 of 2022)
[2024] KEHC 2949 (KLR) (20 March 2024) (Sentence)**

Neutral citation: [2024] KEHC 2949 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL CASE E027 OF 2022
AK NDUNG’U, J
MARCH 20, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

DAVID SIMON LENGOIBONI ACCUSED

SENTENCE

1. David Simon Lengoiboni was charged with the offence of Murder contrary to Section 203 and 204 of the Penal Code. A plea bargain was entered into on 27th February, 2024. He subsequently pleaded guilty for the offence.
2. In terms of Section 202 as read with Section 205 of the Penal Code the accused, upon being convicted, is subject to serve life imprisonment.
3. Ms. Mureithi for the Accused while submitting in mitigation on behalf of the Accused stated that the Accused is very remorseful and regrets his actions. She added that the pre-sentence report dated 19th March, 2024 is favourable and the probation officer has indicated that the Accused is suitable for a non-custodial sentence. Ms. Kariuki for the ODP indicated that would rely on the pre-sentence report.
4. On record is a pre-sentence report dated 19th March, 2024 that indicates that the convict is the son to the late John Ramiton a retired KDF soldier and Raeli Lengoiboni who is elderly and currently living with one of her daughters’ in Maralal Town. The father owned 48 acres of land at Angata Nanyekie where the family lives and practices pastoralism. The accused is the 3rd born among his siblings; Joseph Lengoiboni formerly a catechist and currently doing business at home, Rhoda Lengoiboni a housewife, Silvana Lentelalu a housewife, Eli Lemelen, Esther Margaret married and lives a nomadic life, Lazarus Johnnie living with his sister in Maralal, Ann Lengoiboni living a nomadic life, Stella Lengoiboni married and Elizabeth Debra living with a niece at Nomotio.



5. The family indicated that the accused related well with them and would always support most of his siblings. They termed him as a good person and that they were willing to receive him back and undertake cleansing ritual in line with the Samburu culture.
6. The accused is 51 years old born in 1973. He joined Maralal DEB Primary school and proceeded to Ndururumo Secondary School for his high school education. Thereafter he joined the Kenya Polytechnic for a Diploma in International Relations and later on undertook a bachelor's degree and a master's degree at Kenya Technical University. Over the years he was employed by various organizations holding different offices.
7. The accused has three children; the late Robin Jilano Lengoiboni (the victim in this matter), DL (married) and JL a student.
8. The accused has land in various locations which includes; the family land at Angata Nanyekie, 1 acre at Gatundia in Laikipia which has a permanent house where he used to dwell, 5 acres at Muwarak in Laikipia, 8 acres at Thome area in Laikipia and 3 acres at Kwa-Wanjiku in Laikipia.
9. He has no previous criminal record.
10. The accused admitted to have committed the offence alluding that he was drunk when the victim who was his son attacked his mother (accused's mother) with a knife and that as he tried to defend her, he grabbed the knife that the victim had and used it to stab him. His criminogenic needs assessment discovered that he uses anger against others, uses alcohol with negative effects and was under the influence at the time of offence.
11. The Accused is remorseful and he is very regretful noting that he had a good relationship with his son and that the occurrence will haunt him for life. He begs for leniency and forgiveness and promises never to re-offend.
12. The victim was 23 years old. He mostly relied on the accused and also did casual jobs. He was single and was living at his father's home at Gatundia.
13. The victim's sister stated that she has no bitterness with her father and has fully forgiven him. She feels that her father's incarceration would be a big loss to them as children and larger family.
14. The Assistant Chief Angata Nanyekie where the accused was born and brought up stated that the accused related well with the members of the community. He has no criminal record and is not a threat to the security of the area nor would he be in danger if granted a non-custodial sentence. The community is willing to take him back and to undertake a cleansing ceremony in line with the Samburu culture to enable him to be reintegrated back into the society.
15. The Assistant Chief Gatundia where the offence occurred and where the accused lived at the time; terms him as a person of short temper especially while drunk but he had no previous criminal records for him. He had no inroads with other community members but mostly had issues with his family. He does not object to his being granted a non-custodial sentence.
16. A female friend he has been cohabiting with at Rumuruti described him as a good person who relates well with other people and that he has good ties with community members.
17. Under Section 205 of the *Penal Code*, manslaughter is punishable by a maximum sentence of life in prison. This is, however, the maximum penalty that is normally reserved for the most serious of such situations. This case does not, in my opinion, fall into the category of the most heinous examples of



manslaughter. The state has stated that the accused is a first-time offender. As a result, I've ruled out life imprisonment.

18. Case law would be the starting point in determining a custodial sentence for manslaughter offenses because the [Judiciary Sentencing Policy Guidelines](#) are silent on the path to take in manslaughter instances. In [V M K v Republic](#) [2015] eKLR ten years in jail was given for manslaughter. When a dangerous weapon was used in the commission of the crime, courts are more likely to sentence the offender to life in prison. There is no proof that the accused utilized such a weapon in this case. I have noted that the convict pleaded guilty and where a judge takes a plea of guilty into account, it is important that the convict says he or she has done so as noted in the case of [R v. Fearon](#) [1996] 2 Cr. App. In this case therefore I have taken into account the fact that the convict readily pleaded guilty, as one of the factors mitigating his sentence. Further, the English practice of a reduction of one third has been held to be an appropriate discount as held in the case of [R v. Buffrey](#) (1993) 14 Cr App R (S) 511 where the Court of Appeal in England indicated that while there was no absolute rule as to what the discount should be, as general guidance the court believed that something of the order of one-third would be an appropriate discount. In light of the convict's plea of guilty, and persuaded by the English practice, because the convict before me pleaded guilty, I propose at this point to exclude the sentence of life imprisonment
19. In the case of [Republic v Daniel Okello Rapuch](#) [2017] eKLR, a sentence of 12months imprisonment was meted out on a man who killed another on the allegation of being involved in an illicit love affair with his girlfriend. The facts revealed that the accused and deceased had a great relationship, and that on the material date, the deceased returned home to find his young daughter missing from the house, and that his wife was unaware of her whereabouts, prompting him to act as any loving father would and find his daughter, and that in the process of taking her home, the accused knocked her against the table and door, injuring her and causing her death. The case herein relates closely to the cited matter above as the Accused killed a son.
20. Am persuaded, and this after considering period served in remand in accordance with Section 333(2), that a sentence of 3 years would be appropriate in this case to run from today.
21. In view of the foregoing, the accused is hereby ordered to serve a sentence of 3 years imprisonment.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF MARCH 2024

A.K. NDUNG'U

JUDGE

