



**Republic v Loriu (Criminal Case 32 of 2017)  
[2024] KEHC 3063 (KLR) (19 March 2024) (Sentence)**

Neutral citation: [2024] KEHC 3063 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CRIMINAL CASE 32 OF 2017  
CM KARIUKI, J  
MARCH 19, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SOSPETER LOMONG’O LORIU ..... ACCUSED**

**SENTENCE**

1. The Accused person was charged with the offense of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) (Chapter 63 of the Laws of Kenya).
2. The particulars are that on the 29<sup>th</sup> day of August 2017 in Rumuruti township, Laikipia West Sub County within Laikipia County shot dead Lekupuri Leiyagu.
3. He pleaded not guilty and the matter went into full trial.
4. The accused was found guilty of the offense and thus convicted
5. The Prosecution reported to the court that there are no previous records thus accused can be treated as a first offender.
6. The Defence preferred to tender submissions in writing.

**Accused submissions on Mitigation**

7. Mr. Lomong’o was at the time of the incident a person of the young age of barely 24 years. This affected the heavy responsibility bestowed on him as an individual by the Kenya Defence Forces (KDF) where he worked, albeit briefly for about a year. His supervisors and trainers ought to have known about his instability and should not have been sent to a war zone and given an automatic gun that he was not used to operating.



8. This was his first mission into a warring area therefore he had no experience of how to handle different situations, his state of mind was clearly not right, and his partner whom he was assigned to be his company in the town abandoned him outside and when his gun went off he was all alone struggling to bring it to control. In his defence, he noted that he never intended to harm anyone and most importantly did not intend to kill. This is true because as a trained soldier if he indeed intended to kill then he would have aimed and would have lethally hit his targets.
9. . The fact that the evidence showed that rounds fired from the gun were about 7 while only one caught the deceased and the deceased's accompanying friend was only caught by a bullet that grazed his thigh is clear evidence that Mr. Lomong'o was not intent on killing and it is plausible that automatic rifle which was ready to fire from the instructions of his supervisor went off.
10. Mr. Lomong'o himself in his defence provided details about how he alongside other soldiers was deployed to the Laikipia region which was replete with bandits and their mission was to fight dangerous armed bandits. That the commander tasked him alongside other soldiers to guard a water vehicle to town and back and all this time all were armed with automatic rifles and they were instructed by their supervisor to cock the guns throughout the journey to be ready for any eventualities along the way.
11. The closeness between Mr. Lomong'o and the victim suggests that if he was intent on killing the deceased he would not have shot the deceased with all the rounds fired from the gun and he would equally have fatally shot his friend. His accompanying colleague testified that when he rushed out of the shop, he found Mr. Lomong'o in a state of panic which means that he immediately regretted the incident.
12. He did not resist when he was asked to surrender the gun and he never resisted arrest even his colleagues testified that he was very remorseful from the onset.
13. Mental affliction; Although Mr. Lomong'o was at the time of taking his plea passed fit to stand trial, the same seems to have been a misdiagnosis given that the court itself found it impossible to proceed with him in his state of mind and issued an order that he be taken for mental treatment. He was receiving mental treatment from the Mathare Mental Hospital for about 15 months to stabilize his mental affliction and he has throughout been on medication for mental illness. Even today, Mr.Lomong'o continues to receive medication for mental stabilization even while in remand prison. This can be corroborated by the prison authorities at the Nyahururu G.K. Prison as well as his medical records including the proceedings of the court.
14. Remorseful; Mr. Lomong'o has remained very remorseful from the beginning, his aunt testified in his defense that he even sought the family of the deceased immediately intending to seek forgiveness and he never tired from it. That they even sent elders for this purpose. This gesture is quite telling that Mr. Lomong'o regretted the whole incident and all he has sought throughout is forgiveness. The pre-sentencing report itself establishes that Mr. Lomong'o regrets the incident.
15. The pre-sentencing report establishes that besides being remorseful, Mr.Lomong'o also acknowledges the effect of the incident on the victim's family and this is reflective of his magnanimity as a person.
16. No previous criminal records; Mr. Lomongo has been a model citizen before the unfortunate incident. He has no previous records of criminality and this has also been established by the county probation director in his pre-sentence report. His aunt testified about his character from childhood where he has grown through immense difficulties in the interior areas of Marsabit which has for decades been ravaged by armed conflicts among the communities living there.



17. How he grew up without a father from a tender age when his father who was an administration police officer was killed in the line of duty by bandits, in a poor family, and how he was always an obedient child who took up the responsibility of providing for the family even taking up the responsibility of educating his younger siblings.<sup>12</sup>The fact that Mr. Lomong'o grew up in a conflict zone but had the mental strength to wither all that and not engage himself in any criminal enterprises is commendable and it means that he is a person who has avoided any incidences of criminality.
18. It is submitted that the impact of the negative factors of growing up in a warring region and the effect on the 'normal' development of Mr.Lomong'o should not be overlooked.
19. The pre-sentencing report establishes that Mr. Lomong'o was a very disciplined officer before the incident. He was not a person who intended to throw away his life. This was a person focused on getting better as a person and getting his family out of poverty.
20. .The incident has been a turning point in Mr. Lomong'o's life which was otherwise normal. But for this unfortunate and regrettable event, the defendant would not be here today.
21. Potential to reform;<sup>16</sup> While Mr. Lomong'o admits to having been taking drugs such as alcohol, smoking, and chewing miraa before the incident, he has since stopped those habits and the county probation director's report corroborates this change as Mr. Lomong'o continues to strive to be a better person. It is therefore evident that there is hope to reform.
22. The court is urged that, in sentencing be guided by the now infamous case of Muruatetu Case. The court be guided by the circumstances of the case, his background, his military history, and all factors considered.
23. Time in custody; The court is urged to consider the time Mr. Lomongo has been in remand custody on and off since he was arrested in 2017 as his bond terms have been suspended severally on account of health and eventually since the security for the bond was withdrawn because his mother needed to seek some loan to pay school fees for his younger sibling as she did not have any other source of money.
24. In the end, the plea to court is to be lenient in sentencing Mr. Lomongo in consideration of all the circumstances before the incident, after the incident, mental affliction, employment history, substance abuse, legal issues as a young adult, his cooperation with the police, and his character during the hearing of the case the court is beseeched to consider Mr. Lomong'o as a candidate for a noncustodial sentence as he has demonstrated remorse after the event and throughout the trial.
25. They seek the court to be merciful and lenient in sentencing.
26. The post-conviction report (PCR) was filed by the probation office which is reported in the report dated 18/1/2024. The accused admits committing the offense but pleads mistake, as the gun went off unintentionally ally. He regrets the action. He prays for leniency. He promises not to re-offend.
27. The family of the victim calls for the maximum sentence as the victim was an innocent fourteen (14) years boy in standard five (5) and was killed for no apparent reason.
28. The Post condition report findings that the accused was into alcohol and miraa chewing before the commission of the offence which habit he has ceased. He is single. The report recommends a custodial sentence.
29. There was evidence that an accident made a rapid firing killing a student and injuring another on the hip. He never explained in his defense what his act caused the loss of life but kept on denying it as his



defense, but only in the Post-Conviction Report, he is quoted to say it was a mistake after the evidence established his culpability.

30. The offense of murder was established beyond reasonable doubt while the accused occasioned the loss of life of an innocent student and seriously injured another.
31. The purpose of sentencing is retribution to punish the offender, deterrence to deter the commission of a further offense, rehabilitation to enable the offender to reform, restorative justice -to address needs arising from criminal conduct e.g. loss and damage, community protection-incapacitating the offender and to punish the offender.
32. Thus, the court has to inflict the accused with a sentence proportionate to the circumstances of the offense taking into account the mitigating facts tendered.
33. Thus, the court finds that since he is a first offender aged twenty-nine (29) years and taking into account all factors in the matter, He will not be awarded the maximum sentence which is the death penalty but an imprisonment proportionate to the circumstances disclosed.
34. The Court of Appeal has capped the life sentence to thirty (30) but the court considering the accused circumstances and the period he has been in custody, will award a lesser sentence to enable the accused to be fully reformed and also to punish and deter him from further such actions.
  - i. The accused is thus sentenced to serve fifteen (15) years with effect from the dates of this ruling.

**DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 19<sup>TH</sup> DAY OF MARCH 2024**

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**C KARIUKI**

**JUDGE**

