



**Republic v Kiptalam (Criminal Case E007 of 2021)
[2024] KEHC 5982 (KLR) (27 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 5982 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E007 OF 2021
RB NGETICH, J
MAY 27, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

VINCENT KEMBOI KIPTALAM ACCUSED

SENTENCE

1. The accused person 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 the 26th day of January, 2021 at around 1930hrs at Kapkaino Village Keturwo Sub-location, Lawan Location in Baringo north Sub-County within Baringo County, murdered Edwin Luka.
2. The charge was read over to the accused who denied the charge and the matter was set down for hearing. However, when the matter came up for hearing on the 27th April,2022, the defence counsel Ms. Cheruiyot informed the court the accused intended to pursue plea bargaining and sought time to make a formal application to the Office of the Director of Public Prosecutions. The court fixed the matter for mention on the 25th May,2022 to confirm position on plea bargain.
3. On the 23rd January, 2024, the prosecution counsel Ms. Ratemo informed the court that the plea agreement was ready and applied for the accused to be availed physically in court for execution of the plea agreement and plea taking as the victims pursue compensation. On the 6th February,2024 the plea agreement was duly executed and the charge was reduced to manslaughter.
4. On the 7th February, 2024, the charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code* and its full 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 Case

5. On 26th day of January,2021, at around 7:30 Hours, the deceased Edwin Luka Chepkonga a male juvenile aged about 17 years who was a standard seven pupil at Tilo Primary school was at the home of one Luka Rerimoi in Kapkaino village when the accused stabbed him on his chest with a sharp object killing him on the spot. At the scene were the accused, deceased, one Laban Kaino Kaino Toroitich and a neighbor. There was local brew (Busaa) at the home which was meant for refreshment after the work. Laban and Luka started drinking and were joined by other people including the deceased and the accused herein but at around 6:30 P.m., they left the home leaving behind Laban, Luka Rerimoi, the deceased and the accused.
6. At around 7:00P.M, while Laban and Luka Rerimoi were inside the house enjoying the brew, the accused and the deceased were outside listening to music from the phone. Laban and Luka Rerimoi heard commotion outside; the deceased was asking the accused to leave him alone and when the commotion grew louder, Laban and Luka Rerimoi were forced to go outside and on going out, they saw the deceased falling, his face facing downwards while the accused walked away threatening anyone following him would face the fate as the deceased. He disappeared into darkness only to resurface the following day and was arrested.
7. On Laban and Luka Rerimoi moving closer to the deceased, they saw blood oozing from the deceased and on a closer look, they realized Edwin Luka had died. They raised alarm and people from the neighborhood responded immediately.
8. The local area assistant chief Kono Sub-location, Mr. Chebii who was informed through phone, visited the scene and confirmed that the deceased had died and informed Assistant chief Mr. Kandie Keturwo Sub-location Assistant where the incident took place. Mr. Kandie reported to Barwessa police station.
9. Police visited the scene and commenced investigations. Senior Sgt Dosh and Pc Nderitu of Barwessa police station visited the scene and while still attending to the scene were shown the accused who was at the scene. Police officers from SCCIO Baringo North Cpl Koech arrived at the scene and took over the investigation.
10. The body of the deceased was moved to Baringo County Referral hospital mortuary awaiting autopsy while the suspect was escorted to Kabarnet Police station. Postmortem was conducted on the 5th day of February, 2021 by Dr. Wangare Wambugu a pathologist based at Kabarnet County referral Hospital who formed the opinion that the cause of death was penetrating chest injury(severe Aorta) due to sharp force trauma following assault.
11. The police file was compiled and the accused charged with the offence of murder now reduced to manslaughter upon request for plea bargain.

Mitigation

12. The defence Mr. Chepngoswa mitigated on behalf of the accused. He submitted that the accused is remorseful, that he is a young man aged 31 years old, married with one wife and blessed with 3 children. Counsel submitted that the accused's mother is aged 73 years old. He further submitted that the accused is a first offender and has been in custody for three years; that he is currently suffering from ulcers and has chest problems especially during cold seasons. He submitted that while in prison, the accused has studied the bible and how to live with people in the society and has a letter from prison; he concluded that accused is remorseful and prays for leniency.



13. The prosecution counsel Ms. Ratemo, submitted that prior to the plea agreement, the deceased's father had requested that the accused through his relatives visit him to discuss the aspect of compensation and in the course of the plea bargain period, they made this known to the accused but he has not communicated to deceased's father and accused has therefore not shown remorse. She further submitted that the deceased was 17 years old, a young boy with a whole future in front of him which was cut off by the accused; that the deceased's family had so much expectation from the deceased. That he was helping his family during school holidays and since his death, the father has not recovered and is still bitter for the loss of his child. In conclusion she submitted that the penalty for manslaughter is life imprisonment but in the light of the decision of the Court of Appeal on life sentence, they pray that the accused be sentenced to 30 years imprisonment and they are not opposed to the time spent in custody being considered.

Determination

14. Under section 205 of the *Penal Code* a person convicted of Manslaughter is liable to imprisonment for life. However, in view of the fact that the court of appeal has declared life sentence unconstitutional, the court has discretion to impose any other lesser sentence depending of circumstances of each case.

15. In view of the above, I have considered the accused's mitigation through his Advocate. The defence counsel submitted that the accused is remorseful however he has not demonstrated remorse by seeking forgiveness from the victim's family despite the deceased's father extending an olive branch to him. I however take note of the fact that he is a first offender and the fact that he has a young family. I also take note of the fact that the deceased was a young man aged 17 years old with a bright future ahead of him and much expectation from his family. Having taken the above into consideration, I find that a sentence of 20 years imprisonment will be appropriate for the accused and the period accused served in remand to be computed in sentence.

16. Final Orders: -

1. Accused to serve 20 years imprisonment
2. Period served to be computed in the sentence
3. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET

THIS 27TH DAY OF MAY 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

Elvis/Momanyi – Court Assistant.

Accused present.

Ms. Ratemo for state

No appearance for the Accused.

