



**Republic v Mata (Criminal Case 11 of 2019)
[2024] KEHC 5974 (KLR) (27 May 2024) (Resentence)**

Neutral citation: [2024] KEHC 5974 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 11 OF 2019**

RB NGETICH, J

MAY 27, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

IBRAHIM KAMAN MATA ACCUSED

RESENTENCE

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. Particulars of the charge were that the accused on the 4th day of June, 2019 at Tangulbei trading centre, Tangulbei location at Tiaty East Sub-county within Baringo County murdered Kakere Todo.
2. The accused pleaded not guilty to the charge and the matter was set down for full trial with the prosecution summoned a total of 7 witnesses in support of the charge preferred against the accused. By a judgement delivered on the 8th February, 2024, the accused was found guilty and convicted of the offence of manslaughter contrary to section 202 as read with Section 205 of the Penal Code and convicted him accordingly.
3. The court called for a pre-sentence report which was duly filed in court on the 18th of April,2024 as directed.

Presentence Report

4. From the report, the accused is aged 33 years old and had formal education up to class 8 in the years 2009 when he did KCPE and managed to score 264 out of 500. He did not continue with school out of his own personal will and from the year 2010 to the time of his arrest, he was doing casual jobs within Tangulbei area. He is married and blessed with three children but his wife is at his parent's home and efforts to reach her proved futile.



5. The accused's father indicated that the offender has been in prison for a while. He prayed for community rehabilitation and he is willing to relocate him to Samburu and facilitate his re-integration within the community. The offender's uncle noted that he has stayed with the offender since childhood and his major problem was excessive alcohol consumption. He added that as a family they were willing to facilitate reconciliation between the two families but the victim's family declined reconciliation. His main prayer is that the offender be granted non-custodial sentence and he is willing to facilitate his rehabilitation within the community.
6. Home reports indicates that the accused had gone to a food kiosk at Tangulbei shopping centre where he demanded to have his meat cooked but the owner of the food kiosk informed him that she did not have enough firewood to prepare the meal. The accused went outside and found the deceased where he found the deceased and they had an argument and, in the process, he took a knife the deceased was using to chop his meat and stabbed him on his stomach. After realizing that he had caused harm to the deceased, the accused run for his safety to nearby police station where he was arrested and later charged with this offence. He said he committed the offence under the influence of alcohol and prays for forgiveness. He stated that he has been in custody from the year June,2019 and if granted non-custodial sentence, he will relocate to where his mother is at Samburu. He confirmed that no reconciliation has been done.
7. The secondary victims who included the father to the deceased and uncle (brother to the deceased's father), all opposed the offender being granted non-custodial sentence; they are still bitter as the accused's family have not taken any reconciliatory steps.
8. The local administrator stated that the offender is well known to him from has been in the custody of his uncle since childhood before the mother got married. He attributed accused's offence to alcohol. He is opposed to accused being granted non-custodial sentence as victim's family are still bitter towards him and if released, his life may be in danger. He said he tried to hold meetings with the two families so that they could reconcile but his efforts proved futile as victim's family did not want any reconciliation meetings.

Mitigation

9. The defence counsel Mr.Kipkulei mitigated on behalf of accused's family. He stated that the accused is remorseful and regrets committing the offence. That the deceased was his friend and the circumstances that led to the commission of the offence was not planned. He submitted that the accused had no malice aforethought and that he is a young man aged 33 years and a father of three.
10. Counsel submitted that the children who are aged between 14 years and 7 years needs parental care and support from education up to providence of their needs. He submitted that the accused prays for a non-custodial sentence and informs the court that he has learnt a lot during his stay in prison. That he has undergone several trainings while in custody and prays for leniency during sentencing and for a non-custodial sentence so that he can go back to his family. He stated that they were not able to meet and convene a date for reconciliation and that the accused wishes to apologize to the family of the victim.
11. The prosecution counsel Ms. Ratemo submitted that she has looked at the pre-sentence report and she will not object to the time spent in custody being considered during sentence. That however, she would wish to urge the court to consider views of the victims while considering sentence. She submitted that no efforts have been made to reconcile and the family of the victim are still bitter having lost their kin;she left the aspect of sentencing to the court taking into account the views of the victims as per the pre-sentence report.



Determination

12. 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.
13. I have considered the accused's mitigation through his Advocate; that he is remorseful of the offence, he is a first offender and that he is a young man married with three children who needs parental love and providence and he regrets the offence and prays for a non-custodial sentence so that he can go back and provide for his family. Further that the accused committed the offence while under the influence of alcohol.
14. I take note of the fact that the victim's family are opposed to non-custodial sentence; they are still bitter as no reconciliation has taken place. The local administrator is also opposed to the accused being granted a non-custodial sentence on ground that the victim's family are still bitter for the loss of their kin and they may retaliate.
15. In view of the above, I find it unsafe to impose non-custodial sentence and find that sentence of 20 years imprisonment will be appropriate to the accused. The period served in remand to be considered in sentence.
16. Final Order: -
 1. Accused to serve 20 years imprisonment
 2. Period served in remand 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.

RACHEL NGETICH

JUDGE

In the presence of:

Elvis/Momanyi – Court Assistant.

Accused present.

Ms.Ratemo for state

Mr.Kipkulei for the Accused.

