



**Republic v Koima (Criminal Case 49 of 2020)
[2024] KEHC 10372 (KLR) (23 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10372 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE 49 OF 2020
RN NYAKUNDI, J
AUGUST 23, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

LIZA JEBIWOTT KOIMA ACCUSED

JUDGMENT

1. Liza Jebiwott Koima was charged with murder contrary to section 203 as read together with section 204 of the Penal Code. The particulars of the offence were that on the 28th day of August 2020 at Mountain View estate in Kipkorgot center in Kapsoya location, Ainabkoi sub-county within Uasin Gishu County, she murdered Abraham Kipkorir Lagat.
2. The accused person pleaded not guilty to the offence, calling upon the prosecution to discharge the burden of proof as against the accused person. The state at all times was under the leadership of Senior Prosecution Counsel Mr. Mark Mugun whereas the accused person was represented by Learned Counsel Mr. Kigen Thomas.
3. The prosecution marshalled 8 witnesses in to establish the ingredients of the offence of murder as tabulated hereunder:

Prosecution’s Case summary

4. Having presided over the matter and having gone through the submissions by both counsels, the submissions by the state counsel captures a fairly true record of the evidence adduced and I shall proceed to adopt the same.
5. PW1: David Kangongo Cheruiyot told the court that he knew the deceased and the accused as his neighbours. He was aware that they were married and had two children. On 28/08/2020 at around 0830HRS, he was on his way to tether his cows at a grazing ground. He heard the deceased’s dog



barking and went to check what was the cause. He saw the accused walking from behind their house and when he inquired whether the dog wanted to bite her, the accused said nothing. She instead walked towards him and said that her husband (the deceased) had not come back home the previous night. She narrated about how she had dropped him off in Kipkorgot centre and that he was to return home in the company of a friend but had not. He encouraged her to call that friend and inquire the whereabouts of her husband. At that juncture, the accused whipped out a phone from her pockets, which phone she was able to identify as the husband's (the deceased's) phone. He continued with his work and shortly afterwards he heard the accused screaming saying, "ndiye yule, ndiye yule!" From where he was, he could not see what the accused was pointing at, forcing him to cross over the fence. Behind the house, he saw the body of the deceased, still dressed in his pyjamas with an injury on the head and clothes stained with blood. He noticed that this was the very same spot that he had just seen the accused coming from when he went to check why the dog was barking. He wondered why the accused had said she had not seen her husband yet the body was in that very same spot that she had come from. The accused continued screaming, attracting the attention of other neighbours who came to the scene. Policemen were notified of the incident and came to the scene to collect the body of the deceased.

6. PW2: Julius Kibet Cheboi testified that he is also an immediate neighbour of the deceased and the accused. He knew them to be a married couple. On the 28/08/2020 at around 0830HRS, he was doing some masonry work at home and had to draw water from a well that is next to the boundary with the deceased's (and accused's) homestead. He noticed that the accused was outside the home making phone calls, looking uneasy and quite disturbed. She told him that her husband, the deceased, had not come home the previous night after she dropped him off at Longonot supermarket in Kipkorgot centre. She then left in a hurry heading to the house. Less than 10 minutes after that encounter, he heard her screaming outside her gate. When he went there, he found her with another neighbour (PW1) trying to calm her down. She was crying uncontrollably. Other neighbours responded to the screaming and when they got there, PW1 told them that the accused had shown him the body of her husband. They found the body of the deceased lying behind his house. The body had blood oozing from the mouth, ears and nose. Lastly, he told the court that the deceased had recently moved in from a place where he was teaching and for the time that he had known them, he had never witnessed any disagreements or fights between them. At the time of the incident, he noted that the accused did not appear injured or physically harmed.
7. PW3: Dr. Walter Nalyanya testified that he conducted a post-mortem on the body of the deceased. After examining the body, he formed the opinion that the cause of death was due to blunt force trauma to the head. He produced the post-mortem form as Exh 2.
8. PW4: Maraba Henry testified that on the night of 27/08/2020 he met up with the deceased at Kipkorgot centre. The deceased asked him to give him a lift home as they discussed mutual farming interests that they had. He dropped him off along the tarmac road and left the deceased walking to his house which was located not more than 600m from where he had dropped him off. In the morning at around 0900HRS, someone called him to ask whether he had met up with the deceased the previous night. He confirmed that he had and that he had even dropped off the deceased at his homestead. At around 1100HRS he came to learn that the deceased's body had been found murdered in his own compound. He went there to see it for himself and saw the body being loaded onto a police van.
9. PW5: Dalmas Kibet testified that he is a government analyst. Afterwards he told the court that the Government Analyst Report had been prepared by his colleague, Mr. Polycarp Kweyu who was engaged for an indeterminate period. The Lab had been requested to test whether blood stains found in a mattress cover matched with that of the deceased. By mutual consent of all the parties, he produced the Govt. Analyst's Report which confirmed that the blood stains found on a piece of mattress cover



did in deed match with the samples of the deceased. He also produced the accompanying Exhibit Memo Form together with the piece of mattress cover as Exhibit 5B and 5C.

10. PW6: Fiona Bartocho testified that she was the Assistant Chief of Kapsoya sub-location. On 28/08/2020 at around 1000HRS, she was informed of a case of murder in Kipkorgot village. She notified the police and accompanied them to the scene where she discovered that the deceased was someone she was conversant with. His body was lying behind his house. She saw the policemen loading the body onto a police van. She also witnessed the policemen recovering clothes, beddings and a mattress cover from the bedroom of the deceased.
11. PW7: Phillip Kipkemoi Kiplagat testified that he is a brother to the deceased. On 28/08/2020, he received a call from someone who asked him to rush to Mwalimu's (the deceased's) home in Kipkorgot. When he got there, he found the accused crying uncontrollably while covering her face with a lesa. He noted that she did not appear injured or physically harmed before he went behind the house where he saw the body of Mwalimu lying on his back with blood oozing from both ears and nose. The body was dressed in his pyjamas which led him to conclude that his brother must have died either when he was preparing himself for bed or when he was asleep in his bed. He also noted that there were signs that something had been dragged from inside the house to the spot where his late brother's body was found. He desperately tried to calm down the accused so that he can find out what had happened but his efforts initially bore no fruit. He then asked her for the key to the padlock that was used to lock the back door, to which the accused, at first appeared hesitant to give it out and later said that she had lost it. When the police arrived, the padlock was broken and he noted that there were also signs of something being dragged from the bedroom to behind the house, through the back door. In the bedroom, they discovered fresh blood stains. The bed was well-made but when they flipped over the mattress, they noticed that it had fresh blood stains at the spot where the pillow was. This told them that the deceased must have been injured and bled on his bed. The shoes and clothes that the deceased had worn the previous day were in the house indicating that he had come back to the home he shared with the accused. He witnessed the police documenting the scene and identified the photographs in court. He was also present when PW3 conducted a post-mortem.
12. PW8: Corporal Moses Okoth testified that he is the investigation officer in the matter. He went to the scene where he found the deceased lying dead behind his house. He was dressed in his pyjamas and had blood oozing from his mouth, nose and ears. He noted that in as much as the back door to the house was locked, there appeared to have been something dragged from the house to the spot where the body of the deceased was found. They followed the trail to the bedroom where they noticed that there were fresh blood stains on the wall and the floor. Although the bed had been made, when they flipped the mattress over, they noticed that there were blood stains on the mattress. It was at that point that the accused became a person of interest. He placed her in custody and on interrogation, she admitted that she had used a mallet/hammer to hit the deceased on the head after she beat her up. He sent the exhibit to the Government Analyst and when it returned a positive result for the deceased's blood, he knew for sure that the deceased bled, and must have been assaulted, on his matrimonial bed then his body dragged outside to create an impression that he was murdered from outside his house. He then produced pictures of the scene and the deceased's clothes as Exh 3A, 3B and 4. He also produced the deceased's phone, which the accused was found in possession of as Exh 1.
13. When placed on her defence the accused elected to give a sworn testimony and called a witness. The crux of the defence case was that she acted in self-defence. She told the court how the deceased came back at night while appearing inebriated. A disagreement ensued and she ended up hitting her husband using a mallet. The husband later died as a result of the injuries sustained on the head.



14. DW2 was the daughter of the deceased and the accused. Her testimony was that her late father was wont to furious outbursts and physical violence anytime he partook of alcoholic drinks. In as much as he was away on the day in question. She admitted that she was not at home on the night in question and therefore could not authoritatively state whether her father came home drunk or engaged in a physical altercation with her mum, the accused, on the night in question. With that, the defence closed its case

Submissions in support of the prosecution's case

15. Prosecution Counsel, Mr. Mark Mugun filed submission in addressing the various elements of murder. His submissions were limited to answering the questions on whether the accused was positively identified and whether her actions were preceded by malice aforethought. Counsel summarised the chain of events as follows:
- i. The deceased is dropped off near his home by PW4;
 - ii. Immediately prior to the discovery of the body, the accused was seen by PW1 and PW2 pacing up and down the compound while appearing confused.
 - iii. When asked what the problem was she stated that the deceased had not come home the previous night and that she suspected that he had been accosted by robbers.
 - iv. Shortly, in fact almost immediately after her encounter with PW1 and PW2, the body of the deceased was found behind their house.
 - v. At the scene where the boy was discovered, it seemed like the body had been dragged from inside the house through the kitchen to the backyard.
 - vi. The kitchen door was locked from outside.
 - vii. The accused was the only person with the key to the house.
 - viii. When the house was opened, the drag marks led to the bedroom.
 - ix. The beddings and the bedroom appeared too well spread out.
 - x. When the mattress was overturned, blood was discovered.
 - xi. There were also drops of blood on the wall next to the bed.
 - xii. When the blood samples collected from the crime scene were subjected to forensic analysis, it was found to be a positive match to the deceased.
16. From the foregoing chain of events, Mr. Mugun concluded that the accused person knew that her husband had died from an act she committed. She was positively identified as the perpetrator of the act that led to the death of her husband.
17. On the element of malice aforethought, counsel cited the provisions of Sections 206 of the Penal code and the case of Republic V Silas Magongo Onzere Alias Fredrick Namema [2017] Eklr.
18. Counsel submitted that the assault aimed at the deceased's head meant that the accused intended to cause a fatal blow to the deceased with the intention of killing him. After hitting him on the head with a blunt object, the accused dragged his body outside their home. She then feigned ignorance as to what had happened to him and was unaware of his whereabouts. She did not try to offer first aid. Malice aforethought was therefore proved.



19. In conclusion, it was submitted for the prosecution that there is sufficient evidence to show that the accused person hit the deceased on the head. After realising that she had murdered him, she devised a series of acts to cover up her acts. The evidence pierces through the red-herring that she so cleverly devised. The prosecution urged the court to find the accused person guilty.
20. At the time of drafting this judgment, learned counsel for the accused person had not favoured this court with his submissions for consideration. I shall nonetheless proceed to make a determination with the evidence adduced.

Analysis & Determination

21. This being a criminal matter, the burden of proof in all the elements of offence against the accused person lies with the prosecution. *The Constitution* of Kenya in Art. 50(2)(a) expressly states that every accused person is presumed innocent until the contrary is proved. That contrary is purely the duty of the prosecution presenting both direct or indirect evidence accompanied with any physical or documentary evidence in support of discharging the burden of proof of beyond reasonable doubt. It is settled in law that the existence or non-existence of the facts in issue or not in issue to secure a judgment over a given criminal case is essentially the burden of the prosecution on behalf of the estate. Conversely, there is no burden laid upon the accused person to prove his/her innocence except in exceptional circumstances which may fall within the provisions of Section 111 of the *Evidence Act*. This doctrine on the standard and burden of proof found its way in the provisions of Section 107(1), 108 and 109 of the *Evidence Act*. In order to articulate it more succinctly given its origin in common law. The locus classicus case law articulates the standard and burden of proof in the following language: in the case of *Woolmington –v- DPP* (1935) AC 462 at pp 487 Viscount Sankey, L had this to say

“But while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence.

Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained It is not the Law of England to say as was said in the summing up in the present case: ‘if the Crown satisfy you that this woman died at the prisoner’s hands then he has to show that there are circumstances to be found in the evidence which has been given from the witness-box in this case which alleviate the crime so that it is only manslaughter or which excuse the homicide altogether by showing that it was a pure accident....”

22. In the case of *Miller –v- Ministry of pensions* (1947) 2 ALL ER 372 at 373 Denning, J buttressed the point as regards the burden of proof required when he stated as follows:

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence ‘of course it is possible,



but not in the least probable' the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

23. The accused person who is facing the offence of murder contrary to section 203 of the Penal Code places a heavy burden on the prosecution to prove the following elements beyond reasonable doubt:
- a. The death of the deceased one Abraham Kipkorir Lagat
 - b. The death was unlawfully caused
 - c. The death was caused with malice aforethought
 - d. The accused persons participated in or caused the death of the deceased.
24. The case is purely built on circumstantial evidence. In the case of R v Hillier (2007) 233 A.L.R 63, Shepherd v R (1991) LRC CRM 332 the courts observed that:

“The nature of circumstantial evidence is such that while no single strand of evidence would be sufficient to prove the defendant’s guilt beyond reasonable doubt, when the strands are woven together, they all lead to the inexorable view that the defendant’s guilt is proved beyond reasonable doubt. It is not the individual stand that required proof beyond reasonable doubt but the whole. The cogency of the inference of guilt therefore was built not on any particular strand of evidence but on the cumulative strength of the strands of circumstantial evidence.”

25. Similarly, the Court of Appeal in Simon Musoke v R 1 EA 715 held that:

“In a case depending exclusively upon circumstantial evidence, he (the judge) must find before deciding upon conviction that the inculpatory facts were incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. The circumstances must be such as to produce moral certainty, to the exclusion of every reasonable doubt.” (See also R V Kipkering Arap Koske 16 EACA 135, Musili Tulo v R (2014) eKLR).

26. As regards to the element on proof of death of the deceased, the prosecution’s case is supported by the testimony of PW3 Dr. Nalyanya who carried out the post mortem examination of the deceased at Eldoret Hospital on 28th August, 2020. The body of the deceased was identified to the pathologist by Philip Kipkemoi Kiplagat and Suzan Cherotich Kiplagat. The defence does not dispute the fact that the deceased Abraham Kiplagat is dead.
27. The second ingredient is on whether the cause of death of the deceased was unlawful. It is settled law that every homicide is unlawful unless excusable as stipulated in Art. 26(3) of *the Constitution*. The provisions of Section 213 of the Penal Code defines what constitutes causation issues in the offences against the person which includes murder, manslaughter or infanticide etc. The cause of death can be either through direct or circumstantial evidence. In settling this issue with finally, the prosecution placed reliance on the testimony of PW1 who confirmed that on 28th August, 2020 he had taken his livestock for grazing when he heard a dog barking from the neighbourhood. This neighbourhood happened to be that of the accused person and on quick interrogation, he was informed that the deceased was yet to return home. According to PW1 in the course of the conversation with the accused he saw her holding a mobile phone belonging to the deceased. Apparently, this was the same kind of conversation which was held between PW2 and the accused person who confirmed once again that the deceased was not around the homestead at the time. It did not take long before PW3 heard screams



from the home of the accused all about the deceased body which had been discovered near the kitchen. The injuries sustained by the deceased were to be confirmed in a post mortem report duly signed by PW3. According to PW4, on 27th August 2020, he met the deceased after a short engagement, he dropped him at his home with a commitment that they were to meet on the following day on 28th August, 2020. Unfortunately, on 28th August, 2020 PW4 received a phone call that the deceased was found dead and a body dumped in his compound. The prosecution did not stop there. It summoned the evidence of PW5 who also confirmed that the death of the deceased and his body having sustained multiple injuries. It is also important to note that unlawfulness of the offence is tested around the grounds of justification excusable, accidental or other natural causes. It is a requirement under the law of Kenya, for every crime in Kenya without exception, the element of unlawful act of omission as a condition precedent for criminal liability be established beyond reasonable doubt by the prosecution. As indicated above, and going by the principles of *R V. Gusambiza S/o Wesonga* (1948) 15 EACA 65. There is no cogent evidence in this murder incident the deceased's death falls within the exceptions contemplated in Art. 26(3) of *the Constitution* as notably read with Section 17, 207 and 208 of the Penal Code. In the final analysis it appears sustainable to find that there are no unanswered questions on the unlawful cause of the death of the deceased.

28. In all offences of murder, for an accused person to be found guilty, the fundamental element to be proven is that of Malice aforethought. As regard to proof of availability of malice aforethought in any indictment against an accused person, Section 206 of the Penal Code gives the following guidelines:
- (a). An intention to cause death or to do grievous harm to any person whether such person is the person actually killed or not.
 - (b). Knowledge that the act or omission causing death will cause the death of or grievous harm to some person, whether such person is the person killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not or by a wish that it may be caused.
 - (c). An intent to commit a felony.
 - (d). An intention to facilitate the escape from custody of a person who has committed a felony.
29. In the matter at hand, the prosecution has entirely relied on circumstantial evidence. There is no witness who saw the accused person cause the death of Abraham Lagat. What is more relevant is the fact of the matter as stated by the prosecution witnesses PW1, PW2, PW4, PW5, PW6 and PW7 who acknowledged that the deceased person between the 27th and 28th of August, 2020, he was reported by the accused person as having gone missing and not yet returned to the homestead. It was on 28th August, 2020 when the neighbours had some screams coupled with barking and this occasioned some concerns as to what must have taken place necessitating some distress call in the form of screams. The accused person on her part, was not very keen to divulge or disclose any knowledge as to whereabouts of the deceased. It is also in evidence that the deceased person was later
30. to be traced within the vicinity of his own house having sustained multiple injuries as diagnosed by Dr. Nalyanya in her medical report dated 28th August, 2020. As a result of the examination, Dr. Nalyanya opined that the cause of death was severe head injury due to blunt trauma. It is also clear from the evidence that the blunt object which might have been used against the accused person was a Mallet, though its recovery was not successful to be produced as an exhibit before this court. It is also clear from the evidence that mobile phones belonging to the deceased were to be found in possession of accused person. It may seem that the accused being a wife there is really nothing suspicious of her



being in possession of mobile phones but in accordance to Section 111 of the *Evidence Act*, she had a duty to explain the circumstances in which she came to be in possession of the phones. That is lacking from her defence to this court. In addressing the level of issues surrounding the death of the deceased, prosecution subjected the blood stain piece of mattress cover and the deceased blood sample to a DNA profile. The DNA government analyst report dated 8th January, 2021 concluded that the DNA profile generated from the piece of the blood stained mattress was of human origin which matched the DNA profile of the deceased. In assessing circumstantial evidence and the approach taken by the accused person on the basis of what must have transpired prior to the discovery of the deceased body within his premises, this court is definitely of the view that explanation given by the accused is not truthful nor convincing. That explanation together with her daughter is improbable and there is no reason of possibility of it being true to entitle her to an acquittal. The weight of the government analyst report, is that it established the chain of evidence from the respective samples which were properly taken and safeguarded until they were tested in the laboratory by government analyst P.K. Lutta. The probability of such a match or inclusion in particular circumstances excluded any other possibility that the deceased was killed elsewhere and not within the vicinity and premises occupied with the accused person. the accuracy for the reading and interpretation of the profile has not been challenged by the defence. In dealing with circumstantial evidence underpinned to the facts of this case, without considering every fragment individually, cumulatively, I form the impression that all the pieces of evidence both oral and commentary point towards the accused's guilt having been established beyond reasonable doubt. It is discernible from the evidence of the prosecution in this matter, that the deceased did not die accidentally or in circumstances which are justified or excusable. I say so because although nobody saw when and how the killing was started, there is evidence of the accused person being seen around the homestead, raising false alarms, denying knowledge of the whereabouts of the deceased person while indeed the body was within her foresight and knowledge. In other words, the accused was murdered and the person who is responsible for the killing is the accused person before this court. I must emphasize that at some point, the accused made attempts to dislodge the credibility of the prosecution witnesses by giving a version of their movements with the deceased between the 27th of August 2020 and 28th August, 2020. The only version which he repeatedly focused on had to do with the incident of a fight between the deceased and the accused person given the narration as to their movements from one room to another as the court was told by the chronicles from the accused. This kind of trajectory has claimed by the accused person cannot entitle him of a benefit of doubt for it does not rest upon a reasonable and solid foundation created either by positive evidence or gathered from reasonable inferences which are not in conflict with or outweighed by the proved facts of the case. The evidence by the accused person was not just improbable. It was clearly false. It was lies and lies that were concocted to mislead the court. A daughter was also conscripted to give evidence to save the face of her mother from the consequences of extreme cruelty which she brutally and intentionally caused the death of her husband. The view I take of the testimony adduced by the defence is that the accused conduct prior, during and after killing her husband thought she had committed a perfect crime that would be impossible to prove as she had killed him in that house but the trustworthiness and the credibility of the prosecution witnesses exposed her lies of what they are. The prosecution has therefore on the proved facts established the guilt of the accused person for committing the offence of murder contrary to Section 203 of the Penal Code beyond reasonable doubt. In the result, the accused is person is found guilty of killing the husband and convicted as such to be punished in compliances with the provisions of Section 204 of the Penal Code.

Sentencing

1. At this stage of the trial, the court is called upon to mete out an appropriate sentence considering the circumstances of the offence and the various objectives of sentencing as well as the dicta in the case of



Francis Muruatetu Versus Republic (2017) eKLR. The court in the said decision sets out parameters of sentencing an offender found culpable under Section 203 of the Penal Code. The applicable factors include: Age of the offender, being a first offender, whether the offender pleaded guilty, character and record of the offender, Commission of the offence in response to gender-based violence, remorsefulness of the offender, the possibility of reform and social re-adaptation of the offender and any other factor that the court considers relevant.

2. The central principles on sentencing were discussed in the cases of Titus Ngamau Musila alias Katitumrinal Case No 78 Of 2014 quoting from the case of Santa Singh V State Of Punjab [1978],4 SCC 190 Stated as follows:

“Proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances extenuating or aggravation of the offence. The prior criminal record, if any, of the offender, the age of the offender the record of the offender as to employment, the background of the offender reference to education, home life, society and social adjustment, the emotional and mental condition of the offender, the prospects for rehabilitation of the offender, the possibility of return of the offender to a normal Life in the community, the possibility of treatment or training of the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence”

3. What makes this stage of the trial a complex one, is balancing the competing interests as between the convict and the victims of the crime. It is important to note that in our jurisdiction, even with the outlined objectives and principles of sentencing, there is yet to be a desired level of consistency, proportionality and uniformity as between the verdict rendered in almost similar facts of the case with another under the penumbra of unfettered judicial discretion.
4. In achieving an appropriate sentence, the principle of proportionality dominates the Kenyan sentencing policy. It stipulates that the actual sentence imposed should be commensurate not only to the gravity of the offence committed but also the personal circumstances of the particular offender. In my view, the selection of a particular punishment to be imposed to an individual offender is subject to the constitutional principles of proportionality from my reading Art. 50(2)(q) and Art. 25(1)(a) of *the Constitution*. By this I mean that the imposition of a particular sentence must strike a balance between the particular circumstances of the commission of the relevant offence and the relevant circumstances of the
5. person sentenced. I equally bear in mind that Kenya’s Criminal Justice System has outlawed mandatory minimum sentences underpinned within the rubric of constitutional imperatives in the Bill of Rights. Certainly, that open ended discretion therefore even within the prospectus of the sentencing policy guidelines and statutory law on the prescribed specific sentences by the legislature to a particular offence, is no longer the norm but the exception.
6. Given the background of unconstitutionality of mandatory life and death sentences, in the context of *the constitution* as a whole in the violation of Art. 26, there is need for a strong deterrent test being applied to sentencing schemes involving violent crimes like murder contrary to Section 203 of the Penal Code. The level of crimes like murder in our country has reached alarming proportions and poses a threat to the preservation to the right to life. The question therefore which should worry the trial courts particularly those adjudicating on violent crimes which endanger life and existence of being should go scot free and be allowed to escape the consequences of the unlawful act by getting away with lenient sentences. This is a balancing act which trial courts must carry out subject to the rights vested in every person in our constitution including the victims of violent crimes like murder contrary to section 203 of the Penal Code and Manslaughter contrary to section 202 of the Penal Code. In this sense, given the



disparity, inconsistency and disproportionate realized in the development of our jurisprudence in the sentencing regime, time has come to revisit the issue under the suggested permissibility of bandwidth matrix of sentences for serious offences like murder.

7. I have in mind the doctrine of a convict serving a particular imposed sentence for a minimum period prescribed by the court without being eligible for parole or release or on the other hand the terminable sentence so imposed to provide for a residual clause of a minimum period which the convict must serve before any review can be undertaken by the court more so if he/she has exhausted the right of appeal to the apex court.
8. In the present case, it is observed that there are concerns raised from every corner of our society regarding domestic violence, leading to a rise in homicide cases. In sentencing the accused, the court takes into account her personal circumstances, the interest of society, the crime and the circumstances surrounding its commission. From the judgment this is clearly a case of gender based violence.
9. As the court in *S V Kekana (2014) ZASCA* remarked, though from the Republic of South Africa, the words resonate very well with our own local circumstances. Thus; domestic violence has become a scourge in our society and should not be treated lightly. It has to be deplored and also severely punished. During the sentence hearing, learned counsel Mr, Kigen invited the court to appreciate that the accused is a first offender, she is remorseful and regrets the offence. She has a family, which she intends to look after as the main bread winner and therefore urged this court to consider a non-custodial sentence.
10. I have made reference above to the rise of gender based violence in the country. I have equally detailed the deceased's injuries, which demonstrates the incredibly violent and vicious attack on the deceased by the accused. He must have suffered incredible pain, shock and horror in his last moments.
11. For the foregoing reasons, aggravating factors outweigh the mitigation factors offered by the convict in this matter of murdering her husband. As a consequence, all aspects of the sentencing principles and objectives taken into account including the guidelines in the *Muruatetu* case, the accused is sentenced to 20 years' imprisonment, with a credit period of the time spent in custody pursuant to the provisions of Section 333(2) of the Criminal Procedure Code.

DATED AND SIGNED AND DELIVERED AT ELDORET THIS 23RD DAY OF AUGUST, 2024.

In the Presence of

Mr. Mugun for the State

Mr. Kigen for the Accused

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R. NYAKUNDI

JUDGE

