



**Republic v Chepkwony (Criminal Case 18 of 2018)
[2023] KEHC 20482 (KLR) (29 June 2023) (Sentence)**

Neutral citation: [2023] KEHC 20482 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE 18 OF 2018**

RL KORIR, J

JUNE 29, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

WILITHA CHEPNGETICH CHEPKWONY ACCUSED

SENTENCE

1. The Accused was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the charge were that on the 20th day of September 2018 at Olingwoswet village in Longisa location within Bomet County jointly with others not before the court, murdered Bernard Kipng'etich Yegon.
2. At the conclusion of the trial, this court found the Accused guilty of the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. In convicting the Accused the court in its Judgment dated April 24, 2023 held as follows:-

“In this case I have found the accused guilty of causing the unlawful death of the deceased. As the element of *mens rea* is not proved to the required legal standard, I shall apply the provision of section 179(2) and substitute the offence of murder with that of manslaughter”.

3. This court heard the mitigation of the Accused on June 12, 2023. Learned defence counsel Ms Kosgei submitted that the Accused was a mother of four, the youngest being in Grade 4. That she was now a member of a church, was baptized, was remorseful and pleaded with the court to have mercy on her for the sake of her young children.
4. The Accused addressed the court and pleaded for mercy. She stated that their homestead had been razed down and she now relied on casual labour to educate her children and feed her family.



5. Mr Njeru, the learned Prosecution counsel submitted that he had no antecedents of the Accused and that she may be treated as a first offender.
6. This court is guided by the objectives of sentencing as set out in the [*Judiciary sentencing Guidelines 2016*](#). They include retribution, deterrence, rehabilitation, restorative justice, community protection and denunciation. In [*Thomas Mwambu Wenyi v Republic*](#) (2017) eKLR, the Court of Appeal held that:-

“As for the sentence, the Supreme Court of India in *Alister Anthony Pereira v State of Maharashtra* at paragraphs 70-71 had this to say on sentencing:-

70. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no strait jacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.

71. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence

As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

7. I have taken into consideration the Pre-Sentence probation officer’s report filed on May 12, 2023. The Report indicated that both the Accused and the deceased were longtime lovers and had an intimate sexual relationship. That there was nothing substantive to indicate that the Accused might have intentionally killed the victim.
8. The Report stated that the Accused still maintained her innocence. Her family led by her husband wanted the court to give the Accused a non-custodial sentence so that she could continue fending for her family and continue with her parental obligations.
9. The report further stated in the Victim impact statement that the victim’s family were aggrieved and hurt by the death of the deceased. That his death had left a big gap that would take long to fill. They opposed any form of negotiation with the Accused’s family which might end up in a truce.
10. The community had a positive attitude towards the Accused. That the Accused had participated in community services and that the community came in handy to fund raise for her towards the construction of the house she currently lived in as the ones in Samituk had been burnt down by irate villagers after the killing of the deceased. The Report stated that the area chief had no problem with the Accused being placed on probation as she had lived well within the community when she was out on bond.



11. The Probation Officer recommended a non-custodial sentence.
12. I have considered the positive recommendation for a non-custodial sentence based on the findings of the probation officer above. I have also considered the victim impact statement. The victims of the offence are still aggrieved that the senseless act of the Accused had left his wife widowed and his children fatherless. I am conscious that the role of the court is to balance the scales of justice.
13. The maximum sentence for manslaughter under section 205 of the *Penal Code* is life imprisonment. Howie J Grove and Barr JJ in *R v Scott* (2005) NSWCCA 152, stated: -

“There is a fundamental and immutable principle of sentencing that this sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed in the circumstances of the crime committed...One of the purposes of punishment is to ensure that an offender is adequately punished...a further purpose of punishment is to denounce the conduct of the offender.”
14. The taking of a person’s life is a heinous and serious offence. The sentence should therefore reflect society’s collective indignation against the offence. The sentence must also reinforce the sanctity of life and can only do so in observing the principle of proportionality.
15. In the end and considering the circumstances of the case, the Accused is sentenced to serve 10 years’ imprisonment. This lenient sentence should encourage the families of the Accused and the victims to reconcile and live harmoniously. The sentence shall run from the date of conviction being April 25, 2023.

SENTENCE DELIVERED, DATED AND SIGNED AT BOMET THIS 29TH DAY OF JUNE, 2023.

R. LAGAT-KORIR

