



**Republic v Cheboi (Criminal Case E009 of 2022)  
[2023] KEHC 24244 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24244 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE E009 OF 2022  
RB NGETICH, J  
OCTOBER 26, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**KENNETH KIPKENEI CHEBOI ..... ACCUSED**

**RULING**

1. The accused Kenneth Kipkenei Cheboi had been charged with the offence of murder contrary to section 203 and 204 of the Penal Code. The particulars of the charge being that the accused on the 19<sup>th</sup> day of May, 2022 at around 1600hrs at Pemwai village, Molo Sub-Location, Orokwo Location within Kabarnet Division murdered one Kiplangat Cheboi by cutting him 15 times using a panga.
2. The charge and its full particulars were read over to the accused who denied the charge and the matter was set down for full hearing. However, when the matter came up for mention before Justice H.K Chemitei on the December 19, 2022, the matter was set up for mention to confirm if the prosecution will be agreeable to plea bargain. On March 16, 2023. On the said March 16, 2023, the state counsel prosecution Ms Ratemo informed the court that they had agreed to pursue plea bargain. On the July 12, 2023 the plea agreement was duly executed. The charge was reduced to manslaughter following a plea-bargaining agreement.
3. On the 12<sup>th</sup> day of July, 2023, the charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code and its particulars was read over and explained to the accused who pleaded guilty and was convicted on his own plea of guilty.

**Brief Facts of The Offence**

4. The facts surrounding the case are that on the 18<sup>th</sup> day of May, 2022, the deceased had visited his mother and the accused herein. They stayed together as usual and the two spent the night in their house. On



- the May 19, 2022, the accused and the deceased decided to cultivate their mother's farm within their homestead while their mother cooked githeri for them to eat once they are done.
5. At around noon, the accused left the homestead after taking lunch to the forest to fetch firewood for sale and sold to a hotel nearby at Kshs.50/= and proceeded to a busaa den to take alcohol. He went home after drinking busaa and found the deceased seated alone outside the house as their mother was in the house watching television. A quarrel ensued between the two brothers over inheritance of family land which escalated into insults with the deceased telling the accused that he was of no importance in their village and the universe since he did not have children. He told him that he would die early and the deceased would inherit everything after his death since he has no children to inherit his share. The insults and shouting developed escalated to a fight.
  6. The accused tried to go away but the deceased followed him while still hurling insults at him which agitated the accused. The accused entered the kitchen, armed himself with a panga and cut the deceased on the head. The deceased fell down and after realizing the deceased had fallen down, the accused while still in rage continued to cut the deceased 15 times occasioning deep cuts on his legs, chopped his left index finger and chopped off the upper part of his head; with brain being scattered on the ground. After realizing that the deceased was already dead, the accused ran away.
  7. Their mother who was sleeping in the house was awoken by noise of her two sons but was unable to move out as she was sick and could only move with crutches. Due to her sickness and the fact that she could only move with crutches, she moved slowly to where her two sons were and saw her first-born son lying on the ground while his younger son was running away. The accused told his mother that he had killed his brother and was holding a blood-stained panga. Their mother screamed for help and went into her house to pray as she could not do much in view of her old age and ill health.
  8. Lukar Kandie, the area village elder heard screams from accused's home. He went to the home and found accused had killed his brother. He called the area Assistant Chief who visited the scene immediately to confirm what he had heard; he called the area chief to inform him of what had happened and asked him to report the matter to the police. Report was made to police who visited and documented scene. The body was moved to Baringo referral Hospital mortuary.
  9. The accused was traced and arrested at the house of Kipsetim at Kapchemom village though he had hidden the panga. He was escorted and booked at Kabrnet police station. Investigations were taken over by P.C Dennis Muthuri who on May 20, 2022 began a mission to recover the panga. He and other officers were led by the accused to Ebenezer Forest where he had buried a panga which was recovered and kept as exhibit.
  10. Postmortem was conducted on the body of the deceased at Baringo County Referral Hospital on the May 24, 2022 by Dr. Wangari who ascertained the cause of death to be acute head injury due to sharp force trauma following assault.
  11. Police file was compiled and the accused arraigned before court and charged with the offence of murder now reduced to manslaughter following plea bargain

### **Pre-sentence Report**

12. The court called for a pre-sentence report which was filed on the September 18, 2023. From the report, the accused attended Pemwai Primary school up to standard 8 where he dropped out of school on his own volition and thereafter engaged in casual jobs within his community until the time of his arrest. He was once married to Agnes and separated due to infertility issue and is currently single and alcoholic.



13. The accused admits the offence as charged. He prays for a non-custodial sentence to enable him restart his life a fresh. He promises not to commit an offence again and says he committed the offence due to anger and was under the influence of alcohol.
14. The accused mother's prayer is for her son to return home since she has lost the deceased and she does not want to lose both. Together with the accused's siblings, they urged the court to give accused community rehabilitation so that he can continue staying with their elderly mother. They all indicated that they have forgiven the offender and after his release, they will do the cultural cleansing process together with the clan and facilitate his community reintegration.
15. The local administration indicated that the accused is well known and he has always been of good character but he committed the offence as a result of feeling of being sidelined by his family. The local administration are not opposed to accused being placed on community rehabilitation as there is no animosity within the community towards him though the accused needs guidance on anger management and alcohol abuse.
16. The local administration of Mariashoni area, Molo sub-county noted that the accused has been a member of his residence for a long period of time and has been working as a farm hand within the community and that he is not a family man and he has no children. He never opposed the accused being given community rehabilitation provided he has someone who will facilitate his reintegration and resettlement.

### **Mitigation**

17. The defence counsel Mr. Kipkulei mitigated on behalf of the accused and submitted that the accused his remorseful having killed his only brother which offence was committed out of anger; not intended and that the accused regrets the whole incident. Counsel submitted that the accused's family has forgiven him and he is ready to join his family/ community to build the nation. He stated that the accused is aged 42 years, is not married and he wishes to go back to the community to start a family. He submitted that the accused is seeking leniency and as the family have come to the terms with the death of the family member. Counsel urged the court to consider that the accused has been in custody from June 29, 2022 to date.
18. The state counsel Ms. Ratemo submitted that she has perused the pre-sentence report and is aware of the victim's position as she had a chance to talk to them prior to recording plea bargaining. She stated that the accused used unreasonable force at the heat of the moment but the family are willing to receive him back. She left the issue of sentence to the court to determine in the light of the circumstances of the case and the force used by the accused at the time of the incident.

### **Determination**

19. Under section 205 of the Penal Code a person convicted of Manslaughter is liable to imprisonment for life. However, the court has discretion to impose a lesser sentence in view of the fact that the court of appeal declared life imprisonment unconstitutional in the case of Malindi Court of Appeal Criminal Appeal No 12 of 2021, *Julius Kitsao Manyeso v Republic*. However, sentence to be imposed will be determined by circumstances of each case.
20. I take note of the fact that accused is remorseful and that the deceased was his brother. His family have forgiven him and there is no doubt that he was provoked by his brother and the insults by his brother went back to a long period over infertility on his part; his brother kept mocking him that he will not get any inheritance from the family since he had no children. There is no doubt that anger had built



up in the accused over a long time and on the material day, his brother the deceased herein persisted in the mockery prompting the accused to unfortunately inflict fatal injuries on his brother. There is no doubt that the accused will live with the guilt of taking away the life of his brother. It is psychological torture that will remain with accused.

21. I agree with accused's family that imprisonment will no doubt result in double lose to the family. In my view, non-custodial sentence will be appropriate in the circumstances. I also take note of the fact that accused was arrested on the June 29, 2022 and he has been in custody since then; a period of 1 years 3 months now.
22. Final Orders
  1. Accused is placed on probation for a period of 3 years.
  2. Right of appeal 14 days.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET**

**THIS 26TH DAY OF OCTOBER 2023.**

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

**Mr. Elvis & Mr. Momanyi – Court Assistants.**

**Ms Ratemo for State.**

**Accused present.**

**Mr. Kipkulei for Accused.**

