



**Republic v Cheruiyot (Criminal Case 10 of 2019)
[2022] KEHC 3146 (KLR) (28 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 3146 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE 10 OF 2019**

**RL KORIR, J
JUNE 28, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

GEOFFREY KIPKIRUI CHERUIYOT ACCUSED

JUDGMENT

1. The Accused, Geoffrey Kipkirui Cheruiyot was originally charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#), Cap 63 Laws of Kenya. Particulars of the offence were that on the 6th day of April 2019, at Kaptebengwet village in Bomet Central sub-county within Bomet county murdered one David Cheruiyot Lang'at.
2. On 15th May 2019, the Accused took plea and denied the charge. Norah Cherotich who was the wife of the victim and mother to the Accused testified as PW1. Midway through the hearing, counsel for the Accused made a request to the Court on 6th October 2021 to allow them to pursue plea bargaining, which request was duly granted.
3. On 15th December 2021, the Accused through his counsel presented before Court a plea agreement entered into between the Accused and the State dated 25th November 2021. The Court examined the Accused to satisfy itself that he understood the plea bargaining process and that he had entered into the agreement voluntarily.
4. The Court thereafter accepted the plea agreement and on 29th March 2022, the Prosecution proceeded to charge the Accused of the lesser charge of manslaughter contrary to section 202 as read with section 205. The lesser charge was read and explained to him in Kipsigis language which he understood and he pleaded guilty.



5. The facts of the information were read to the Accused on 27th April 2022. Particulars were as follows:-

“On the 6th day of April 2019 at around 7.30 p.m. the deceased person, David Cheruiyot Lang’at picked a domestic quarrel with his son Geoffrey Kipkirui (the Accused herein). After the altercations, the deceased left for Bomet town but on his way back later in the day, he met with the Accused person who attacked him by pushing him to the ground causing him to attain injuries. Members of the public rushed the deceased to Oasis hospital where he was pronounced dead on arrival. Police conducted investigations and recommended a murder charge to be preferred. Subsequently, the prosecution upon request by the defence reviewed the case with a view to entering into a plea agreement, which was executed and accepted by the court leading to a plea of guilty being entered on the lesser offence of manslaughter on 29th March 2022.”

6. The Accused person stated that the facts were true and a plea of guilty was subsequently entered.

7. The principles of sentencing in Kenya are found in the Judiciary Sentencing Policy Guidelines (2016). The objectives of sentencing are outlined in paragraph 4.1 as follows:-

“4. 1. The sentences are imposed to meet the following objectives:

1. Retribution.
2. Deterrence.
3. Rehabilitation.
4. Restorative justice.
5. Community Protection.
6. Denunciation.”

8. The Policy Guidelines further suggest mitigating circumstances which upon consideration by the court may afford a convicted person a lenient sentence. Paragraph 23.8 on page 49 provides as follows:

“23. 8. Mitigating circumstances warrant a more lenient penalty than would be ordinarily imposed in their absence. They include:-

- 1) A great degree of provocation.
- 2) Commitment to repairing the harm caused by the offender’s conduct evidenced by the actions such as compensation, reconciliation and restitution prior to conviction.
- 3) Negligible harm or damage caused.
- 4) Mental illness or impaired functioning of the mind.
- 5) Age, where it affects the responsibility of the individual offender.
- 6) Playing of a minor role in the offence.
- 7) Being a first offender.
- 8) Remorsefulness.
- 9) Commission of a crime in response to gender-based violence.



- 10) Pleading guilty at the earliest opportunity and cooperation with the prosecution and the police.
9. The sentence imposed by the court should be proportionate to the offence. This was aptly stated in *Hoare vs. The Queen* (1989) 167 CLR 348), as follows:-

“A basic principle in sentencing law is that a sentence of imprisonment imposed by the court should never exceed that which can be justified as appropriate or proportionate to the gravity of the crime considered in light of its objective circumstances.”
10. Section 205 provides that the sentence to be imposed upon a person who is convicted of the offence of manslaughter is:-

“Any person who commits the felony of manslaughter is liable to imprisonment for life.”
11. In *Orieno vs. Republic* (1983) eKLR, the court stated that the general rule is that a maximum sentence should not be imposed on a first offender. The Criminal Procedure Bench Book at page 116 paragraph 24 in this regard. It states thus:-

“Generally, a maximum sentence should not be imposed on a first offender unless there are aggravating circumstances”.
12. I have taken into consideration the circumstances of this case and particularly the fact that the Accused was a first offender, that he was remorseful and that he willingly accepted his crime and saved the court precious judicial time by embracing plea bargaining. I have also considered the mitigation from the Accused, the pre-sentence report filed on 24th June 2022 and the victim-impact statement.
13. In mitigation, counsel for the Accused submitted that the Accused had been in custody since 2019 and had time to reflect on the severity of his actions. He asked the Court to be lenient with the Accused as the family had already lost one member who was their father, through the actions of the Accused and therefore losing another member, (the Accused) would be to punish an already grieving family. He further submitted that the Accused had been reformed and his mother felt that he had been punished enough in the past 3 years during his incarceration and that he should be forgiven. The Accused on his part prayed for forgiveness from the Court.
14. I note that the Accused has no family of his own and from the Pre-Sentence Report, he was considered a habitual lawbreaker by the local administration. Some of his siblings also have a hostile predisposition towards him while others, including his in-laws would wish that he should serve a non-custodial sentence.
15. It is my considered view that even though the Accused is said to have taken responsibility for his actions, his past conduct as a habitual law breaker when under the influence of alcohol would require that he should undergo rehabilitation. It is clear to me from the social inquiry report that there is lack of proper structures for reintegration, resettlement and reconciliation within the family. It is my finding that a non-custodial sentence may not be appropriate under the circumstances. I am persuaded that some time away from his family would enable him to reflect upon his life. He is not suitable for a non-custodial sentence.
16. This Court observes that there are numerous cases in this jurisdiction where sons kill their parents and especially fathers. In this case, the Post-Mortem Report, PEXH-1 indicated that the deceased died from



fractured cervical cord and spine secondary to assault which was occasioned by the accused. This is a trend that must be checked through deterrent sentences.

17. The Accused is sentenced to serve eight (8) years imprisonment from today. In arriving at this sentence, I have taken into consideration and deducted from the sentence the three years that the Accused has already spent in pre-trial custody.
18. Orders accordingly.

JUDGMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 28TH DAY OF JUNE, 2022

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R. LAGAT-KORIR

JUDGE

Judgment delivered in the presence of Mr. Kadet holding brief Leteipa for the Accused, Mr.Muriithi for the State and Kiprotich (Court Assistant).

