



**Republic v Serar (Criminal Case E003 of 2024)
[2025] KEHC 4251 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4251 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE E003 OF 2024
RB NGETICH, J
MARCH 20, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

ZAMZAM BASHIR SERAR ACCUSED

RULING

1. The accused Zamzam Bashir Serar had been 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 the accused person on the 2nd day of April, 2024 at Kanjulul area in Kiplombe location, Koibatek Sub- County within Baringo County, unlawfully killed Vincent Kiprotich Cheptirim.
2. The accused denied the charge and when the matter came up for hearing on the 19th September, 2024, the defence counsel Mr. Murunga informed the court that they had discussion with the accused and they would wish to pursue plea bargain so as to save the court's time. The prosecution counsel Ms. Omari submitted that she had looked at the facts and they could try plea bargain. Following this development, the court directed that the matter be mentioned on the 16th October, 2024 to confirm the position on plea bargain.
3. On 9th November, 2024, the plea agreement was duly executed and the lesser charge of manslaughter contrary to section 202 as read with section 205 of the penal code and its particulars read over and explained to the accused who admitted the charge and was convicted on her own plea of guilty.

Brief Facts of the Case

4. Facts surrounding this case are that on the on 2nd April, 2024 at 0600hrs, a report was made at Esageri Police station by one Alex Kimosop that one Vincent Cheptirim had been seriously assaulted by his wife and had been rushed to Mercy Mission Hospital-Eldama Ravine. Police officers from Esageri



- Police Station accompanied by the area assistant chief one Musa Kiptemswu visited the scene about six kilometers from the station, arrested the suspect and recovered a blood stained panga suspected to be the assault weapon and proceeded back to Esageri Police Station where they received information that Vincent Cheptirim had succumbed to the injuries.
5. Police officers from Eldama Ravine led by the Sub-county Police commander, DCI personnel and the CIPU Commander Koibatek proceeded to Mercy Mission Hospital where the body of the deceased which had multiple cut wounds was documented and from hospital records, the deceased Vincent Cheptirim aged 35 years was brought to the facility with multiple cut wounds by his brother one Zakayo Cheptirim in the company of neighbors after attempts to resuscitate and arrest bleeding at 0630hrs failed making him succumb to the injuries. At the hospital were blood-stained beddings that were used to carry the victim from his house to the hospital.
 6. The suspect was transferred from Esageri Police Station to Eldama Ravine Police Station and the killer weapon to wit a blood-stained alligator 406mm with a black handled panga marked 'PK' collected and kept as an exhibit. The team then proceeded to the scene of crime in Kanjulul village. They found the deceased's bedroom room disorganized with blood stains on the floor, wall and at the bed side. Clothes were also blood stained. The scene was photographed and documented. Infinix smart 8 mobile phone exhibit marked 'p' was handed to Pc Elkana Mariita the investigating officer in this matter by the deceased's uncle Christoper Konga and there were allegations that the cause of Vincent Cheptirim's death was as a result of infidelity.
 7. Melissa Jebiwott Rotich a female juvenile aged 9yrs and a step child to the suspect who had been under the care and custody of the suspect and who resides in the same house with the accused but at the children's room stated that on 2nd April,2024 at about midnight, her father the deceased herein arrived home drunk and since her step-mother the accused herein does not like the smell of alcohol, she relocated to the children's bedroom as she usually did and the deceased followed her.
 8. A commotion ensued between the duo and the accused who was holding the deceased's mobile phone immediately rushed to the kitchen and returned with the deceased's panga. The accused then started beating the deceased with the blunt sides of the panga while alleging that the deceased had lied to her that she was attending a funeral yet he was spending time with prostitutes.
 9. The accused then locked the children's bedroom and continued exchanging words with the deceased as they walked back to their bedroom. Melissa alleges that she fell asleep and she was awoken by her step-mother's voice saying "let me go". Suddenly she heard something hit like a panga and within minutes, her step-mother asked her to go and call her uncle one Zakayo Cheptirim then the accused changed her mind and decided to go and call Zakayo and this is when she realized that the accused had seriously assaulted her father.
 10. Zakayo Cheptirim then called Alex Kimosop, Christopher Konga and the One Collins Kibet recovered the assault weapon from the scene and kept it in a store adjacent to the house and later handed it over to the police. The deceased's mother one Julia Cheptirim alleges that she last saw the deceased who was a police officer attached to an Administration Police in Mandera County and who was on pass leave on 30th march,2024 at about 1100hrs and the deceased informed her that he was going for a funeral at Muserech area.
 11. Julia further alleged that the accused had been staying with and taking care of three children two of whom the deceased bore with different estranged wives and she did not have an issue with the accused though the deceased was a habitual drinker.



12. The accused was interrogated and she outlined events that led to the incident that amounted to a confession. She raised concerns of infidelity, drunkenness, disrespect and irresponsibility that had rocked their marriage for quite some time and she had been dreaming of going back to her parents.
13. The accused claimed that on the fateful day, her husband the deceased herein who had been away from their matrimonial home for four days arrived home at midnight while drunk and upon her questioning over his long absence from home and late arrival, a commotion ensued and she decided to move to the children's bedroom but the deceased followed her. The accused then went back to their bedroom and started packing her clothes and threatened to go back her parents' home.
14. The accused then decided to check the deceased's phone which he had left in their bedroom and upon opening the photo gallery, she was surprised to see photos of the deceased holding another lady and she confronted the deceased about the photographs. The deceased punched the accused on the face and told her to mind her business. The accused saw more disturbing face book messenger messages sent to the deceased by several ladies. The accused was particularly more angered by a message by one Sophy Maxfila on facebook and whose real name is Sophy Kibet who was calling the deceased sweet love and from the contents of the facebook chat between the deceased and the lady, the accused concluded that the lady was with the deceased during the four days he had been away from his matrimonial home. The accused was further angered by message by one Mercy Kossy and whose real name is Mercy Jepkosgei who wrote that she was aware that the deceased was HIV positive and that he was spreading the disease around.
15. The suspect alleged that upon reading the text messages, she could recollect how she rushed to the sitting room, picked the panga and wounded the deceased who was lying on their bed but after realizing that she had caused serious injuries to the deceased, she dropped the panga on the floor and immediately rushed to call the deceased's brother Zakayo Cheptirim who went to the scene and rushed the deceased to the hospital.
16. Sophy Maxfila (Sophy Kibet) was interrogated by the investigating officer and she confirmed having been in a relationship with the deceased for a period of six months prior to his death. She further disclosed that the deceased had informed her that he was not married but that he had a child with his estranged wife and the child was under the custody of the mother. She also confirmed that she had spent time with the deceased two days before his death and was intimate with him.
17. Mercy Kossy (Mercy Jepkosgei) was also interrogated by the police and she confirmed having dated the deceased since the year 2023. She further stated that she had realized that the deceased was not faithful and was dating several other ladies while still dating her which prompted her to send a text message to the deceased indicating that he was HIV positive and spreading the disease around though the information was not true.
18. On 3rd April,2024 at about 1500hrs, a post-mortem was conducted on the body of the deceased by Dr. Davis Mang'oli at Mercy Mission Hospital who formed the opinion that the cause of death was as a result of exsanguination following severe neck injuries secondary to sharp force trauma.
19. The police file was compiled and the accused person charged with the offence of Murder now reduced to Manslaughter following Plea bargain.

Mitigation

20. The defence counsel Mr. Murunga mitigated on his behalf. He submitted that the accused is aged 28 years old and that she is a battered, dehumanized and violated woman. That she had no voice and had no leverage whatsoever against the deceased who was a careless police officer in Mandera. He submitted



that the character of the accused need not be overemphasized as it has been captured severally by people who included her mother in-law Julia Cheptirim who recorded her account on relationship with the accused and said that she had no issue with the accused as she was a very good girl and she loved her because she was obedient and listened to her. He further submitted that the same sentiments have been echoed by the deceased's brother who said he had never had an issue with the accused which character has also been captured in the pre-sentence report.

21. That the probation officer has indicated in the report that the accused has had a positive past life. That the area chief also indicated that he has never had any issue with the accused and based on the testimony of many, she is a well-respected member of the society and when the incident occurred, it was unbelievable to the mother in-law. He submitted that she was a loving responsible wife to the deceased and she risked her reputation and life just to be with the deceased because she is a somali girl and of a muslim religion while the deceased was a Kalenjin and a Christian.
22. He submitted that the deceased took advantage of the accused and lied to the accused that he had been converted and that his name had changed to Rashid Kiprotich and for that reason, they came together and the deceased organized how she was to run away with her. He said that both were living in Garissa where the accused was living with the parents while the deceased was an officer in Garissa. That they ran away to Eldama Ravine and that is how the relationship begun; that she would have wished to go back but her hands were tied because she had no means and she relied on the deceased. That she immediately took up responsibility as a mother to 2 girls and 1 boy who belonged to the deceased.
23. He submitted that while in Garissa, accused was a very responsible girl as immediately after high school, she worked as security personnel in one of the hotels in Garissa where she earned Kshs.12,000/= which she used to give her mother to supplement needs at home. Counsel submitted that before the court is an accused person who was paid evil for the good she had done to the deceased. That the accused was so committed to the union to the extend that she would step out to sell farm produce from her farming activities to provide for the children and the reason she would do that is because the deceased willfully neglected the family.
24. That on the circumstances of the night of 30th March,2024 when the incident occurred, the deceased was leaving for a burial and it was expected he would return home but the deceased did not return but showed up 3 days later on the 2nd April,2024 at 1:00a.m. That is when the deceased was on leave from Mandera for few days. He arrived home extremely drunk and wanted to forcefully have sex with accused and without explanation of where he had been, he started shouting and becoming violent with accused forcing her to master bedroom and because accused could not submit, she left master bedroom. The deceased followed her to the children's bedroom and at this juncture, he was shouting and demanded for sex and in order to protect the children, the accused left the children's bedroom and went back to master bedroom and the accused followed her to the master bedroom and at this point, the deceased became violent and wanted to forcefully force himself on the accused. That at some point after physical encounter with the accused, the accused having been overwhelmed by the deceased took what was available a panga nearby and went with it to the deceased and started slapping him with it in the hope that the deceased would get threatened and stop physical abuse.
25. That unfortunately amidst the scuffle, the accused got access to the deceased's phone and when she opened the deceased's phone, she discovered that in the 3 days the deceased was away leaving them with no food in the house, he was busy engaging in sex activities with other women one being Mercy Chepkosgei from whom the accused learnt she was deceased's outstanding girlfriend and with message suggesting the deceased may have contracted HIV in his sexual escapades and he was spreading HIV to young girls and intentionally spoiling their lives. That this text message coupled with physical and emotional insults against the accused, the accused took the panga and being exceedingly provoked cut



- the deceased person. He submitted that the character of the deceased told tales, from the mother, that he was a perpetual drunkard and from the chief's sentiments, the chief said it was not the deceased's first time but had been physical even with previous wives.
26. Counsel submitted that the one person who was supposed to protect the accused is the same person who abused her physically. That in one instance while 7 months pregnant, accused requested money for clothes for the unborn child and out of no where the accused started assaulting her through kicks and blows to the extent of breaking lower right incisors. That the accused has physical marks on her back and the right thigh owing to corporal punishment meted on her by the deceased for reason that she had gone to sell farm produce which she had cultivated and she wanted to get money to gather for the deceased's children. That the psychologists have stated that the 3 crucial needs for a woman are security, sex and provision.
 27. Counsel submitted that the accused failed to provide the crucial needs for the accused and not only were the abuses physical, but they were also psychological. That in Somali culture, girls are subjected to FGM and the accused willingly underwent FGM but the accused took advantage of this to verbally abuse her and these insults halt directly to her amounts to emotional abuse. He submitted that the provocation was extreme against the accused and the incident was not planned and as to why she did not opt to go home, counsel submit that she had no means to go home and she was also mindful of the accused's children and was also rejected at home for marrying a Christian.
 28. Counsel further submit that the accused has since reformed as she has been in prison for 10 months. He stated she acted out of extreme provocation and while in remand, she has trained and earned a certificate in respect to training in peace initiative and she has currently joined industry department doing embroidery work and has been selected to be in charge of her block. In conclusion, counsel submit that accused being a young mother of a baby aged one and half years, the baby who was taken by the accused's biological mother is desirous to see her mother and thus seek leniency.
 29. The prosecution counsel Ms. Omari, submitted that she had perused the pre-sentence report which is not favourable to the accused. That the victim's family are still bitter and they indicated the matter is still fresh in their minds. That though the accused's family reached out, they were not ready. She submitted that the deceased's family noted that life has changed as the deceased used to support his family and not only was the deceased taking care of his mother, he was taking care of his siblings and 3 children from other wives and one is in high school. That taking care of the children has been difficult to his family and the deceased's daughter is still traumatized as the incident negatively affected her and she has suicidal thoughts. That despite troubles the accused had with the deceased which may have overwhelmed her, ending life was not a solution like the other wives, she should have also left her marriage. That in the circumstances, they submit that the custodial sentence is appropriate so that the accused may be rehabilitated before she can be released back to the society.

Pre-sentence Report

30. From the report, the accused was born and raised in Wajir county. Her father is administrative police officer and her mother is a housewife living in Garissa County. She sat for her K.C.P. E in 2012 and scored 186/500 points and obtained D (Minus) in KCSE. Thereafter, in the year 2018 to 2019, she was employed as a security guard. In January 2022 she got involved in a relationship with the deceased herein who was a police officer. She eloped and the deceased took her to his rural home in Kanjululu village, Kiplombe location in Koibatek sub-county where she was till the time of arrest. She was blessed with one child aged one and half years old who is currently staying with her maternal mother in Garissa County. She was a housewife taking care of other two children who were left behind by the first wife of the deceased and also did farming in Kiplombe location before her arrest.



31. The offender admits the charge and restated what has been captured under mitigation above. She regrets her actions stating that it was out of anger and she could not control her emotions. She however prays for forgiveness from the honourable court and the victim's family.
32. The sentiments of the victim's family are as captured by prosecution counsel above. Further that the victim's daughter stated to have witnessed the whole incident which has negatively imparted her psychological wellbeing to an extent of having suicidal thoughts.
33. The area administrator indicated that the accused had no previous record. He stated that he had at one time summoned the victim and his first wife in his office due to domestic issues as a result of having several relationships within the locality.
34. From the report no reconciliation process has started on ground that the victim's family are unapproachable.

Determination

35. Under section 205 of the *Penal Code* a person convicted of Manslaughter is liable to imprisonment for life, however the court in Malindi Criminal Appeal No. 12 of 2021 between Julius Kitsao Manyeso vs Republic declared life imprisonment unconstitutional.
36. From the circumstances surrounding the offence, there is no doubt that the accused acted as a result of extreme provocation resulting from the deceased multiple acts of infidelity and acts of violence and disrespect towards her from the deceased. The local administration confirmed that incidences of infidelity have been subject of dispute between the deceased and previous wives of the deceased. Despite the victim's family being bitter, the deceased's mother gave a good account of accused's conduct prior to the incident. The prosecution confirmed that the deceased was a first offender.
37. I have considered circumstances surrounding the offence, I take note of the fact that the accused had built up emotions as result of physical and psychological abuse and the fact that on the material day, she was extremely provoked. Whereas the accused's patience was stretched to extreme limit, life is sacred and it is unfortunate that she was unable to control her anger and applied excessive force in the circumstances. The victim's family are still bitter and no attempts to reconcile the two families have been made. Upon looking at all factors herein, I am inclined to impose a lenient custodial sentence. It will give the accused opportunity to benefit from counselling on anger management.
38. Final Orders: -
 1. Accused to serve 7 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 20TH DAY OF MARCH 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

CA Karanja



Mr.Murunga for accused

Ms.Omari for state

