



**Republic v Chepchirchir (Criminal Case E024 of 2022)
[2025] KEHC 4912 (KLR) (25 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4912 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E024 OF 2022
JRA WANANDA, J
APRIL 25, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MARION CHEPCHIRCHIR ACCUSED

JUDGMENT

1. The accused person herein, Marion Chepchirchir, was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence were that on 21062022 at around 6.30 am at Kapkatet village in Kamagut Location, Soy sub-County within Uasin Gishu County in the Republic of Kenya, she murdered one RK, her own 4 years old child.
2. The Accused was arraigned before the Deputy Registrar of this Court on 12072022 and eventually took plea on 20072022 before Ogola J and denied the charge. She was represented by Ms. M. Kinyua Advocate. The hearing eventually commenced before me on 12072023 when PW1, Mercy Chemigotich Chirchir testified. A date was then fixed when other witnesses would testify. However, Ms. Kinyua informed the Court that the defence had forwarded a proposal to the Prosecution for Plea bargain. As Prosecution Counsel, Ms. E. Okok had not yet received the proposal, I gave the parties time to liaise and report back to the Court. Thereafter, the matter was mentioned on several dates until when finally on 29072024, the parties confirmed to the Court that a Plea bargain deal had been reached whereof the Accused had agreed to plead guilty to the lesser charge of manslaughter. Prosecution Counsel Ms. N. Limo who had by then taken over the conduct of the Prosecution case confirmed the same. Upon the parties' request, I agreed to preside over the plea bargain hearing later on the same date.
3. Accordingly, the Court conducted an inquiry to ascertain the integrity of the Plea bargain deal and to ensure that the process complied with the requirements set out under Section 137A-O of the *Penal Code* on the admission of Plea bargain Agreements. Pursuant thereto, the Accused was sworn under



oath and taken through the process of an inquiry on whether she had voluntarily and without any coercion or duress, entered into the Agreement and understood its effect.

4. After hearing the Accused and Counsels, the Court was satisfied that the Accused voluntarily entered into, and signed, the Plea bargain Agreement and understood its implication including the waiver of her right to examine and cross-examine witnesses and that the decision on the sentence to be imposed lies entirely with the Court. The Court, having satisfied itself as aforesaid, the Accused took plea afresh, and a fresh Charge Sheet was read out to her, this time on the charge of manslaughter. She pleaded guilty after which the factual basis and/or statement of facts, was read out to her. The facts read out by Ms. Limo, were, recorded verbatim, as follows:

“On the 21/06/2022 at Kapkatet Village, Kamagut Location within Turbo Sub-County in Uasin Gishu County, Sharon Cherotich who is the mother of the accused, left her home for work at around 6:30 am leaving behind the accused and her grandson the deceased, Ryan, aged 4 years. The accused then strangled her son the deceased and hanged him using a mosquito net. Then she ran to the neighbour one Mercy Chirchir to inform her that something had happened to her son where both rushed to the scene and found the deceased child hanging dead in the bedroom. The said neighbour informed the village elder who called the chief who subsequently informed the police. Upon interrogation by the neighbours, the accused admitted that she strangled the deceased because the deceased’s father did not want to take responsibility of taking the deceased to school. She also admitted to the police while recording her statement that she had intended to kill both her two children and commit suicide as well, and that she got shocked of her actions when she realized one of her children who is the deceased had died, prompting her to run to the neighbour Mercy to inform her what had happened.”

5. The Prosecution then produced the Post Mortem Report dated 23/6/2022 as its Exhibit No. 1.
6. When asked whether above facts read out to her were correct and accurate, the Accused, again, responded in the affirmative. Satisfied that the response was unequivocal, this Court then entered a plea of guilty against the Accused on the lesser charge of manslaughter contrary Section 202 as read with Section 205 of the *Penal Code*, and accordingly convicted her on her own plea of guilty.
7. Ms. Limo then informed the Court that the Accused had no past criminal records and ought to be treated as 1st Offender. Regarding sentence, she proposed 15 years imprisonment.
8. On her part, in mitigation, Mr. Kinyua proposed a non-custodial sentence. She submitted that from the circumstances under which the offence was committed, it is clear that the Accused was emotionally disturbed at the time. She reiterated that the Accused is a 1st offender and had no known criminal history, she was only 22 years at the time of the offence, and that she regrets and is remorseful of her actions. Counsel also pointed out that the Accused has been in custody ever since she was arrested, she has undergone counselling and has also joined High School. She further submitted that the Accused was in custody with her other child who is now 2 years old and who is now with the mother of the Accused who is a casual labourer and needs the Accused around. Counsel therefore pleaded for leniency.
9. I then directed that a Pre-Sentence Report be filed and pursuant thereto the Probation Department filed the Pre-Sentence Inquiry Report dated 11/11/2024. After outlining the background upon which the Accused committed the offence and concluding that she probably committed the same due to the stress that she was undergoing after the child’s father abandoned her and declined to offer financial support, the Report recommended a non-custodial sentence, preferably, Probation for 3 years.



10. Given a chance to speak, the Accused stated that she had reconciled with her mother and requested that her mother be allowed to address the Court. There being no objection raised, I allowed the request. The mother, Sharon Jerotich, was accordingly sworn after which she stated that the Accused is her 2nd born child and that she has 3 children in total, aged 25, 23 and 22. She further stated that she has forgiven the accused totally and urged the Court to consider the same.

Determination.

11. Under Section 205 of the *Penal Code*, a person convicted of the offence of manslaughter is liable to imprisonment for life. However, needless to state, the Court has the discretion to impose a lesser sentence depending on the circumstances of each case.
12. The Supreme Court, in the case of Francis Karioko Muruatetu and Another vs Republic [2017] eKLR, guided that, in sentencing, the following mitigating factors would be applicable; (a) age of the offender; (b) being a first offender; (c) whether the offender pleaded guilty; (d) character and record of the offender; (e) commission of the offence in response to gender-based violence; (f) remorsefulness of the offender; (g) the possibility of reform and social re-adaptation of the offender; and (h) any other factor that the Court considers relevant.
13. Similarly, in the case of Daniel Kipkosgei Letting Vs. Republic [2021] eKLR, the Court of Appeal stated as follows:

“..... we observe that the purpose and objectives of sentencing as stated in the Judiciary Sentencing policy should be commensurate and proportionate to the crime committed and the manner in which it was committed. The sentencing should be one that meets the end of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to.”
14. In this case, it cannot be doubted that the Accused was not justified in killing her child, as every life is sacrosanct. For this, there must be some form of retribution and action that would serve as a deterrent against commission of similar offences.
15. Even so, from the mitigation, her own account and the Pre-Sentence Report, there is indication that the Accused, having dropped out of primary school due to the pregnancy, she had a difficult time at home with constant accusation of being immoral and a burden to the family because she gave birth while still at school. This seems to have caused her a lot of emotional instability and it appears that she killed the child with the mind of lessening the burden. According to the Probation Report, it is only after Counselling sessions provided in prison that she realized that she was suffering from depression.
16. The Report, further indicates that the accused was born in 2001 and was about 21 years at the time of the offence. According to the Report, the community knows the Accused as a good person who related well with other members thereof and it recommended a non-custodial sentence. Without a doubt, the Accused found herself as a parent at a relatively young age and clearly, prematurely. She appears to have taken out her anger on her young child, albeit unlawfully. Perhaps, the Accused needed professional help for her depression.
17. I have considered the above mitigating factors and the circumstances under which the offence was committed and also the age of the Accused. I have also considered the fact that the Accused has parental responsibilities to her surviving child hence keeping her in prison for long will not aid in the upbringing and provision for the child who is of tender years. She has also plea bargained for a lesser punishment



with the result that she has saved the Court and the public precious judicial time and the expenses of bringing witnesses to Court to prove her guilt.

18. I have also taken into account the fact that the Accused has been in custody since 12072022 when she was first arraigned before the Deputy Registrar of this Court. This means that she has been in custody for a period approaching 3 years so far. The Accused pleaded for leniency in terms of a non-custodial sentence, the Pre-Sentence Report recommended 3 years' probation, and the Prosecution proposed 15 years imprisonment.
19. Taking all these considerations into account, and keeping in mind the object and purposes of the Judiciary Sentencing Policy and Guidelines and period spent in custody, I am of the view that a long custodial sentence will only prevent, and not facilitate, the Accused's rehabilitation and will not serve any constructive social purpose. Despite this however, the Courts are duty bound to send the message that no one is allowed, save for the instances expressly allowed by our Constitution, to take the life of any human being, not even one's own child. In this case, as mother nature dictates, the deceased was entitled the mother's protection as a matter of right, and also of law. Instead, to settle her own scores with the child's father, the Accused needlessly killed the child, her own, in the most heinous and painful manner, namely, by strangling and then hanging him using a mosquito net. According to the post-mortem Report produced, the cause of death was found to be "Asphyxia – most likely due to interior neck compression". No matter the circumstances, this Court cannot allow itself to be seen to condone "excuses" for easily taking the life of another. It cannot be accepted that every time a father of a young child abandons the child and/or refuses to provide for him/her, then the mother's recourse is to kill the child. I refuse to accept this warped notion.

Final Orders.

20. In view of the above, I rule and order as follows:
 - i. The Accused is sentenced to serve a custodial sentence of 4 years imprisonment which shall however be computed as from 12072022 when she was arraigned in Court, in accordance with the proviso to Section 333(2) of the *Criminal Procedure Code*.
 - ii. Upon completion of the prison sentence, the Accused shall serve 1 more year under Probation for purposes of her rehabilitation back into the society and supervision.
 - iii. The Officer-in-charge, the Directorate of Children Services, Uasin Gishu County is hereby directed, upon the release of the Accused from custody, to take steps to supervise the Accused person's relationship with her surviving child to ensure that she does not pose a danger to the child's safety and well-being.
 - iv. For purposes of the implementation of order (iii) above, the Officer-in-charge or Head of Station/Region, Office of the Director of Public Prosecutions, Uasin Gishu County, is hereby directed to extract and serve this order upon the Officer-in-charge, the Directorate of Children Services, Uasin Gishu County.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 25TH DAY OF APRIL 2025

WANANDA J. R. ANURO

JUDGE

