



**Republic v Chebunge & 2 others (Criminal Case 30 of 2023)
[2025] KEHC 8763 (KLR) (19 June 2025) (Sentence)**

Neutral citation: [2025] KEHC 8763 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 30 OF 2023
RB NGETICH, J
JUNE 19, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MILCAH CHERUTICH CHEBUNGE 1ST ACCUSED

SIMON LOTER AKENOTU 2ND ACCUSED

DANCAN KIBIWOTT 3RD ACCUSED

SENTENCE

1. The 2nd accused Simon Loter Akenotu And 3rd Accused Dancan Kibiwott were jointly 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 on the 20th day of May,2021 at Mogotio Township, Mogotio Location in Mogotio Sub- County within Baringo County, jointly, willfully and unlawfully murdered Charles Keitany.
2. By judgement delivered on the 8th day of May,2025, this court found the 2nd and the 3rd Accused persons guilty of the offence of manslaughter contrary to section 202 as read with 205 of the [Penal Code](#) and were jointly convicted accordingly. upon conviction, the prosecution informed the court that the accused persons be treated as first offenders. The court directed that pre-sentence report to be filed before mitigation.

2Nd Accused Pre-sentencing Report

3. From the report, the 2nd accused did not benefit from formal schooling due to ignorance of his parents. When he was of age, he engaged himself in herding. He later moved to Mogotio Town where he got engaged in casual jobs. Prior to his arrest, he was employed as a watchman in a Bar within Mogotio Town. The accused was married but his wife died in the year 2021 as a result of illness. He has 5 children.



4. The accused said he was at his workplace where he worked as a watchman when a lady reported that her child was missing and requested him to assist her in tracing the child. The accused joined other people to search the child and the child was found with the late victim. In rage, the mob started assaulting the late victim because of abducting the child. Afterwards, the accused went back to his place of work. He was later arrested and charged with the offence of murder after the victim succumbed to death. The accused regrets the circumstances that led to the death of the victim. He prays for leniency during sentencing.
5. The views of the relatives of the late victim were not captured. Efforts to trace them via the investigating officer as well as the local administrators were unsuccessful. The late victim was not known in the area since he is said to have hailed from Turkana. Phone contacts of the victim's family were not available.
6. The area administrator was conversant with the incident. He indicated that he knew the accused person well since he had lived in the area for a long time. The administrator described him as a law-abiding person with no criminal record.
7. The accused pleads with the court for a lenient sentence. He states that he did not plan to kill the victim he administered discipline to the late victim out of anger when the victim was found to have abducted a child.
8. The late victim and the accused person were not known to each other. As a result, no negotiations were done in connection with the death.

3rd Accused Pre-sentence Report

9. From the report, the accused was born in in the year 1992 at Kipsogon Sub-location in Mogotio Location. He dropped out while in class 6 after his mother got married to another man who was discriminating against him. After dropping out of school, he went to live with his maternal grandmother until the time he attained maturity age. He engaged himself in casual jobs and was working as a tractor driver by the time of his arrest. He is not married.
10. The 3rd accused stated that a neighbor called him to assist her in tracing a child who had disappeared. The accused joined other people in the search for the child. The mob finally succeeded in tracing the child who was found with the late victim. In rage the mob started assaulting the late victim for abducting the child. Accused 3 was later arrested and charged with the offence of murder after the victim succumbed to injuries. The accused regrets the circumstances that led to the death of the victim. He prays for leniency during sentencing.
11. Similar comments as given in respect to Accused 2 were given in respect to victim's family and local administration.

Mitigation

12. on the 11th June, 2025, the defence counsel Mr. Chebii mitigated on behalf of both accused persons. In respect to 2nd accused, he submitted that the 2nd accused is remorseful, he is a first offender and a sole bread winner in a family of 5 children. He submitted that his wife passed on and at the time of his arrest, the youngest child was 4 years and they are being cared for by the accused's daughter who is doing menial jobs in Mogotio. That the 4th born is in grade 8 and will require finances which can be provided by the accused. He stated that the other children also need the accused's support.
13. Counsel submitted that the 2nd accused has been in custody for 5 years now and prayed for non-custodial sentence. He stated that the pre-sentence report is positive and looking at the overall picture



of what transpired, 2nd accused was instrumental in the discovery of the child who had been taken to the forest by the accused for defilement. He submitted that the police delayed in rescuing the deceased and victim's home is unknown making it difficult for 2nd Accused to initiate reconciliation. He prayed for a non-custodial sentence to enable him provide for the last two children whose mother is deceased. He stated that an alarm was raised that a child had disappeared and he intended to rescue the child and that he has learnt a lesson and pray that he be considered as a special case.

14. On behalf of the 3rd accused, he submitted that he is also remorseful and a first offender. That the community consider him a very good person and he has never missed court since he was released on bond. He stated that he took himself to the police when he learnt that he was being looked for and that he comes all the way from Mochongoi. Counsel submitted that the accused was instrumental in the recovery of the child. He stated that the deceased was not hit with a stone but he was whipped.
15. Counsel submitted that the 3rd accused is a young man born in 1993 and is yet to marry. That he has learnt a lesson and they pray for a non-custodial sentence. He stated that his siblings come from different fathers and he has had a hard life but has remained a person of good standing character in the community and prayed for a non-custodial sentence.
16. The prosecution Ms. Omari submitted that she had looked at the pre-sentence report and it is favourable though the views of the victim were not captured since they could not be traced. That the local administration say that the accused persons are law abiding citizens and at the time of the offence, the accused persons were rescuing a minor who had been taken by the deceased and so they are deserving a lenient sentence.

Determination

17. Under section 205 of the [Penal Code](#) a person convicted of Manslaughter is liable to imprisonment for life, however this can be reduced depending on the circumstances of each case.
18. I have considered the circumstances under which the offence was committed, the fact that the offence was not planned and the accused persons are remorseful and is a first offenders. I take of the fact that the deceased was found with the child in the forest which led to the people whipping him and he succumbed to injured occasioned by whipping. The pre-sentence report gives a positive report of the accused persons and confirm that they were involved in search of a child whom the deceased had taken to the forest and may have had intentions of defilement.
19. Considering the fact that the accused persons did not intend to kill the deceased but were instead rescuing a child who accused allegedly intended to defile and the rage associated with such abuse against a child and not excusing the act of taking the law into their hands and considering that accused 2 has been in remand for about 5 years, I am of the view that a non-custodial sentence would be appropriate in the circumstance.
20. Final Orders: -
 - a. Each accused to serve 3 years' probation sentence
 - b. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 19TH DAY OF JUNE, 2025.

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RACHEL NGETICH



JUDGE

In the presence of:

Ms. Omari for State.

Accused 2 present.

Accused 3 present.

CA, Elvis/Momanyi.

