



**Republic v Cheruiyot (Criminal Case E002 of 2023)
[2025] KEHC 8597 (KLR) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8597 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL CASE E002 OF 2023
LN MUTENDE, J
JUNE 16, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

EVANS KIPKEMOI CHERUIYOT ACCUSED

RULING

1. Evans Kipkemboi Cheruiyot, the Accused, was incipiently charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). At the outset he denied the information presented by the Director of Public Prosecutions whereby the matter proceeded to hearing with ten (10) witnesses testifying.
2. Subsequently he opted to enter into a plea-bargain arrangement with the State as per the plea bargain agreement signed on 6th May, 2025, that was adopted as the order of the court pursuant to Section 137 of the [Criminal Procedure Code](#). In the result he was convicted of Section 202 as read with Manslaughter contrary to Section 205 of the [Penal Code](#).
3. Facts of the case were that on 25th December, 2022, at around 20.00hrs, screams were heard. It turned out to be Jane Tulen who had seen a person lying on the ground on a neighbouring land being attacked by a man who wore a white T-shirt and black trouser. The attacker was using a cane to hit the victim. Responders moved to the scene and Paul Gichuki Gikunju identified the attacker as Evans Cheruiyot, the Accused herein. As he tried to rescue the victim he was also hit on the hand.
4. The victim was bleeding profusely from both the mouth and nose. He was assisted by Maina, Akai, Esther, Hillary Kiptoo and Simon Kitoe who contacted his father Joseph Kathenya Kimani and they rushed him to Rumuruti Sub-County hospital for treatment.
5. The victim was referred to Nyahururu County Hospital where he died while undergoing treatment. In the meantime, Anthony Ngatia, Dolphine Karuri and James Gichuki amongst others went in search



- of the Accused. They traced him at his house at Gatundia, arrested and took him to the police station where after the investigations were concluded and he was arrested.
6. A postmortem was conducted and the doctor who did it concluded that the cause of death was severe head injury with large left sided epidural haematoma plus subdural haematoma secondary to blunt head trauma secondary to assault.
 7. To reach an appropriate sentence, the court called for a pre-sentence report. According to the report compiled by Carol Irungu, Assistant Director, Probation, Nyahururu County. The secondary victims are yet to come to terms with the loss of their kin and would only be at peace if the Accused is incarcerated. The deceased was married with three (3) children and at the time of his demise his wife was expecting the third child.
 8. The Accused came into conflict with the law previously having been charged with the offence of Stealing in *Criminal Case No. E538 of 2022*. The complainant was his employer, Tulaga Company, where he worked as a security guard. The case was however terminated under Section 202 of the [Criminal Procedure Code](#). He was actively abusing alcohol and bhang prior to his arrest.
 9. The views of the community were obtained from members including the Chief of Melwa Location who revealed that it is a culture in the local community to carry rungus, and both the deceased and Accused were carrying rungus. That the Accused security is seriously threatened should he be released as community members are emotive and had sworn to lynch the Accused should he go back to the community. That the Accused is aggressive and is known to have anger issues. For that reason, his safety could not be assured should he be released.
 10. It was the recommendation of the Probation Officer that the Accused who is 31 years is not remorseful and failed to give a justifiable cause of the offence hence could not benefit from a non-custodial sentence.
 11. In mitigation it is submitted that the Accused is remorseful, he regrets his actions and is a first offender. That both the Accused and deceased were coming from a den where they were taking illicit brew. That the investigation officer had stated that the deceased was the aggressor, although the fact of his life having been taken had to be considered.
 12. Section 205 of the [Penal Code](#) provides thus;

Any person who commits the felony of manslaughter is liable to imprisonment for life.
 13. The objective of sentencing as espoused above which is also guided by statutory and common law principles is aimed at ensuring justice is served to both the offender and the society at large which ideally condemns the conduct of an offender having committed the heinous offence and also others that may follow such a trend.
 14. Today restorative justice is emphasized in the endeavor to address the offending behavior and repairing the harm to the secondary victims.
 15. The Accused has emphasized remorse hence aggravating and mitigating circumstances must be considered so as to ensure proportionality and fairness. This is a case where the murder weapon was a stick/club. Prior to the Accused entering into plea-bargain with the State ten (10) witnesses including the Investigating Officer had testified. According to him the deceased attempted to hit the Accused with a stick/club that fell down which the Accused picked and used to hit him. This is a mitigating factor which calls for a balanced and humane sentence.



16. However, the social inquiry conducted establishes that the Accused is indeed not remorseful and the community is hostile to him. He is stated to be an aggressive person, short-tempered and easily irritable. The community is still hostile to him. They have sworn to lynch him if he returns to the community.
17. From the foregoing, even if the Accused is a first offender, reintegration in the community is a challenge. It is also apparent that there is need for rehabilitation through anger management therapy which can only be in the correctional facility (prison). If the Accused cooperates the underlying issue will be addressed and it will help prevent future incidents.
18. The Accused did not secure bond during trial. Section 333 (2) of the *Criminal Procedure Act* provides;

Subject to the provisions of section 38 of the *Penal Code* (Cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this *Code*. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.
19. In *Bukenya v Uganda* (Criminal Appeal No. 17 of 2010) [2012] UGSC3 (29 January 2013) the court stated that;

“Taking the remand period into account is clearly a mandatory requirement. As observed above, this Court has on many occasions construed this clause to mean in effect that the period which an accused person spends in lawful custody before completion of the trial, should be taken into account specifically along with other relevant factors before the court pronounces the term to be served. The three decisions which we have just cited are among many similar decisions of this Court in which we have emphasized the need to apply Clause (8). It does not mean that taking the remand period into account should be done mathematically such as subtracting that period from the sentence the Court would give. But it must be considered and that consideration must be noted in the judgement”
20. The upshot of the above is that I sentence the Accused to ten (10) years imprisonment, having taken into consideration time spent in custody.
21. For avoidance of doubt, the sentence will be effective from 9th January, 2023.
22. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF JUNE, 2025.

.....
L.N. MUTENDE
JUDGE

