



**Republic v Tum (Criminal Case E014 of 2023)
[2024] KEHC 2375 (KLR) (8 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2375 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E014 OF 2023
RN NYAKUNDI, J
MARCH 8, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

ELIUD KIPCHOGE TUM ACCUSED

RULING

Sentence

1. Eliud Kipchoge Tum, the accused was initially charged with the offence of murder contrary to Section 203 as punishable under Section 204 of the Penal Code. He pleaded not guilty necessitating the case to be set down for hearing for the prosecution to disapprove his innocence under Art. 50 (2) (a) of the Constitution. In the cause of the trial learned counsel Mr. Ogongo on behalf of the accused filed a motion with the state under Section 137 (A) – (O) of the *CPC* seeking leave of the court for negotiations geared towards recording a plea bargaining agreement to have the charge of murder substituted with that of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. As a consequence of the plea agreement negotiations, an information on manslaughter offence was filed by the state which was followed by an entry of guilty by the accused.
2. From the record the brief facts were read to the accused person who also confirmed as to the elements of the offence constituting the offence of manslaughter.
3. It was now the turn of the court to proceed and hand down an appropriate sentence which is one of the solemn moments for any judge. Why how to balance the competing interest of the convict, the state and the victims.
4. In support of a lighter sentence, learned counsel Mr. Ogongo offered the following mitigations;
 - i. Remorseful/reconciliation



The convict is remorseful for his actions leading to the untimely death of Sheila Jepkemboi. The Accused person has unequivocally expressed his regret for his actions leading to the death of Sheila Jepkemboi. The convict has pleaded for forgiveness from the family of the deceased vide the letter dated 11/02/2024.

ii. Bread Winner

The convict is blessed with two issues (i) Abigael Jesang (15 years) and (ii) Emily Chepkurui. The accused person is the sole bread winner of his family and his two issues who will be left despite and without their father in their upbringing upon his incarceration. The convict is also depended upon by his elderly parents.

iii. Criminal History

The convict is a first time offender thus prior to the material facts in this case he was a law abiding citizen.

iv. Crime of passion

The convict was misguided by his deep affectionate feelings for the deceased to take the heinous action which he now unreservedly regrets.

v. Compensation/restitution

It is not humanely possible for the convict to compensate the life lost. Nevertheless, the convict has through his family members extended a hand to the family of the deceased in an effort to compensate for the life lost. The family of the accused to the family of the deceased 1 cow after the incident. The family is now working on submitting 10 other cows in reconciliation/compensation.

vi. Period in Custody

The convict was apprehended on 13.6.2023 and has been in custody since then, thus a period of now ten (10) months. We urge this court to take into account this period when sentencing.

vii. We opine that a sentence of (10) years incarceration would suffice as apt punishment for the crime taking into consideration the mitigating factors highlighted above. The convict pleads for leniency in the sentence terms.

5. Learned counsel further contended that with guidance of the principles in *Joseph Gitau Macharia v. Republic* (2003) eKLR, *Francis Muruatetu and another v Republic and other* (2015) eKLR, *DKC v Republic* (2014) eKLR & *Stephen Karanja Wanjohi v Republic* (2018) eKLR.

6. On part of state Ms. Limo submitted that given the seriousness of the offence it is fair and just to impose 30 years custodial sentence.

7. In the same vein the pre-sentence report filed in court on 1.3.2024 captured the following head of terms, personal information, circumstances of the offence, drugs and substance, previous criminal records, views of the victim's family, attitude of the offender, the views of the offender's family and community views.

8. In summary the probation officer had this to say: the offender admits to having murdered the victim with whom he was apparently having an affair with. He attributed his actions of frustration and anger over his perceived betrayal by the victim when she backtracked on their plan. The matter created serious acrimony between the two families and by the time this report was done the offender's immediate family was forced to relocate. As regards the victim's family, they are still very bitter and opposed to his



release as this will injure their hearts which are yet to heal from the trauma of losing a loved one in an abrupt and painful manner. The victim's husband collaborated the fact that there is a lot of hostility between their family and that of the offender due to the incident.

9. Having determined the various factors in reference to the circumstance of the offence as deduced by the prosecution I bear in mind the following:

The impact of aggravating and mitigating factors, the period spent in remand custody, and were applicable the credit to be granted to the convict. The other consideration in this matter is in the background factual matrix leading to the commission of the offence. Yes, I appreciate that the convict is 36 years old, he is a first offender and that he has pleaded guilty to the offence of manslaughter. In the comparative case of *S v Zinn* (1969) SA 537 the court observed as follows on the factors to be considered by the judge while exercising discretion in passing an appropriate sentence:

That in determining an appropriate sentence, the court has to take into consideration the accused's personal circumstances, interests of the society, the crime and the circumstances, interests of the society, the crime and the circumstances surrounding its commission. Although these interests may be conflicting in nature, it is expected of the courts to keep a fine balance between them, and it must endeavour not to over or to under emphasize anyone of them. The court is also called upon to exercise a measure of mercy when imposing a sentence *S v Rabie* (1975) SA 855.

10. The United Nations declaration on the elimination of violence against women, in 1993 gave the following definitions as "any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life," the definition reflects;The breadth of the issues involved in violence against women.The gendered nature of the abuse.The fact that such violence is directed against a woman because she is a woman or affects women disproportionately.
11. Gender related killings of women in Kenya is an all-time high causing a lot of anxiety and fear among the populace wondering what has happened to our society. That is the reason why human rights based criminal justice system of this country need to be re-designed to allow women enjoy the fullness of the right to life under Art.26 of the [Constitution](#). Once there is probative evidence, towards case building against the perpetrators courts have a duty in this context to exercise discretion to punish acts of violence against women. As already indicated in the facts of this case, duly identified the convict unlawful conduct and culpability in committing the fatal physical harm against the deceased, there was foreseeability of occurrence of death.
12. The persuasive case in *S v Kekana* (2014) ZASCA 158 stated as follows on this subject matter:
- "Domestic violence has become a scourge in our society and should not be treated lightly. It has to be deplored and also severely punished. Hardly a day passes without a report in the media of a woman or a child being beaten, raped or even killed in this country. Many women and children live in constant fear for their lives. This is in some respects a negation of many of their fundamental rights such as equality, human dignity and bodily integrity."
13. The cruelty with which the convict committed this heinous crime against the deceased, is shown in the findings by the pathologist within the context of the post-mortem report dated 27.6.2023. In the pathologist examination and findings, the deceased suffered the following injuries: -Head has been



separated from the whole body at neck region exposing all the neck structures i.e. blood vessel, airway, food pipe, defence marks on the right elbow and wrist, dislocated left wrist joint, multiple stab wound on the anterior chest, wall and abdomen with sharp edges, penetrating wound on the diaphragm, the right lung lacerated, fractured ribs left side 9th rib, left side 7th rib, all great vessel at the neck exposed, the brain tissue decomposing and leaking, neck and head apart.

14. In light of the high levels of violence and serious crimes against the women of Kenya the focus of this court in sentencing the convict would be more inclined to impose a severe custodial sentence notwithstanding the advantage of a plea of guilty entered by the convict. Inevitably retribution and deterrence carries a higher weight as important considerations in the approach I take in this case. The women of Kenya deserve a better life guaranteed by the Constitution to live in dignity as espoused in Art. 28, to be assured of their security as provided in Art. 29 and to be free from torture and cruel inhuman or degrading treatment or punishment as outlined in Art. 25 (a) and to enjoy the right to life guaranteed in Art.26 all being provisions of the Constitution. This victim died a painful death not from a stranger but a person well known and whom she could confide in during her lifetime.
15. Overall the purpose of sentencing in this particular case is to punish the convict for the offence he committed to the deceased and as a consequence betraying the trust bestowed upon him during their lifetime. In a nutshell, I sentence the convict to 25 years' imprisonment with a credit period of the time spent in remand custody pursuant to Section 333 (2) of the CPC. 14 days right of appeal.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 8th DAY OF MARCH 2024

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R. NYAKUNDI

JUDGE

