



**Republic v Chepngetich (Criminal Case E022 of 2022)  
[2024] KEHC 5485 (KLR) (11 April 2024) (Sentence)**

Neutral citation: [2024] KEHC 5485 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CRIMINAL CASE E022 OF 2022**

**RL KORIR, J  
APRIL 11, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JOYCE CHEPNGETICH ..... ACCUSED**

**SENTENCE**

1. The Accused, Joyce Chepngetich was 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 26th May 2022 at Kapkwen Trading Centre within Bomet County, the Accused murdered Hillary Bii.
2. On 21st September 2022, the Accused took plea after the charge and every element thereof had been read and explained to her in the Kipsigis language, a language she elected and understood. The Accused pleaded not guilty to the offence and a plea of not guilty was entered by the court.
3. At the pre-trial on 13<sup>th</sup> October, 2022 defence counsel Mr.J.K Koech informed the court that the Accused wished to make a plea offer. The plea negotiations dragged for a long period and eventually a Plea Bargaining Agreement was drafted and was filed by the parties 10th July 2023. The Plea Agreement indicated that the Accused had agreed to plead guilty to the lesser offence of manslaughter.
4. On 5th October 2023, this court accepted the Plea Agreement after interviewing the Accused and satisfying itself that she executed the Plea Agreement voluntarily.
5. On the same day (5th October 2023), the Accused took plea for the offence of manslaughter. The charge and every element thereof was read and explained to her in a language she understood (Kipsigis) and the Accused responded, "It is true". The court entered a plea of guilty for the offence of manslaughter.



6. The facts as captured in the Plea Agreement are as follows:-

On the night of 26th May 2022, the deceased Hillary Bii was having alcohol at Rembo bar owned by the Accused person. After ordering beer from the bar attendant, one Joyce, he started shouting that his mobile phone was missing. He was very drunk and begun causing commotion among other customers.

The Accused pleaded with the deceased to stop accusing her employees of theft and disturbing other revelers. The deceased responded by asking her “unaweza nifanya nini wewe korgoni” meaning what can you do to me you uncircumcised woman. It is then that the Accused with the help of one of the customers namely Weldon Chirchir attempted to evict the deceased from the bar. The said Weldon slapped the deceased and responded “wacha tupigane basi”, to imply let us fight. The deceased became very furious and slapped the Accused on the face. She then got hold of a beer bottle and hit the deceased once on the head and he began bleeding.

Weldon got hold of the deceased and forcibly removed him from the bar. One of the customers, Bismark Kirui, a witness in this matter, asked Weldon to leave the deceased alone since he was bleeding. However, Weldon hit the deceased who fell down. Weldon stepped on the head of the deceased who was lying down.

After the fierce fight, most of those present including the Accused and Weldon left for home. Thereafter, the deceased was rescued by his relatives and escorted to Tenwek Hospital where he was admitted for about a month after which he succumbed to the injuries. The cause of death was ascertained to be severe head injury due to assault.

The Accused and Weldon footed the hospital bill of Kshs 1,000,000/= and the deceased’s family including two witnesses, Stanley Koskey, his uncle and Daisy Kirui, his mother have stated in their statements that they have reconciled with the assailants.

The Prosecution accepts that:-

The incident occurred in a bar and in all likelihood, the parties were inebriated. The deceased who was visibly drunk was the aggressor and created the disturbance. The Accused hit the deceased in relation to his causing the commotion in her premises and insulting her. Although the Accused hit the deceased, much of the injuries were caused by Weldon who has not yet been arrested.

\* From the totality of the evidence including paying the hospital bill, the Accused has exhibited remorse.

7. The Accused accepted the facts as true and the court convicted her on her own guilty plea. The Accused was convicted for the lesser offence of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#).

### **Pre-Sentencing Report**

8. The Pre-Sentencing Report was prepared by the Probation Officer, Bomet County and it was dated 24th October 2023 and filed on the same day. The Report stated that the Accused was considered to be of wayward behavior and was known to be aggressive and violent when angry. The Report also stated that the Accused was remorseful and prayed for forgiveness.



9. The Report stated that the community was hostile and apprehensive towards the Accused. That the community wondered why her accomplice had not been arrested yet he was within the reach of the authorities.
10. The Report's recommendation was that the Accused was not suited for a non-custodial sentence.

### **Victim Impact Statement.**

11. The court is required by the Victims Protection Act to take into consideration the views of the victims or the victim impact statement. Section 12 of the *Victim Protection Act* provides that:-
  - (1) A victim of a criminal offence may make a victim impact statement to the court sentencing the person convicted of the offence, in accordance with section 329C of the *Criminal Procedure Code* (Cap. 75) and that statement may be considered by the court in determining the sentence of the offender.
  - (2) If a victim expresses a wish to make a victim impact statement, a prosecuting agency shall refer the victim to an appropriate victims' services agency for assistance in preparing the victim impact statement.
  - (3) A victim has a right to present a victim impact statement in all cases where the court is to consider victim protection and welfare.
  - (4) The statement referred to under subsection (1) shall include information on the impact of the offence on the victim's life and any concerns the victim may have about their safety.
12. In *Leonard Maina Mwangi v Director of Public Prosecutions & 2 others* (2017) eKLR, Lesiit J. (as she then was) stated:-

“The Applicant relied on the case of I P Veronica Gitahi & Another v Republic (supra). In that case the Court described and defined the parameters for intervention by victims' representatives under the *VPA* as follows:-

“The Act further provides the parameters of the victim's representative's participation in the trial. The victim's views and concerns may be presented in court at any stage of the proceedings as may be determined to be appropriate by the court. Those views and concerns may be presented by the victim himself or herself or by a “legal representative” acting in the victim's behalf, at the stage of plea-bargaining, bail hearing and sentencing, as far as possible to be heard before any decision affecting him or her is taken; to be accorded legal and social services of his or her own choice, and if the victim is vulnerable, to be given these services at the State's expense, and to make a victim impact statement at the stage of sentencing. These rights must however not be prejudicial to the rights of the accused person or be inconsistent with a fair and impartial trial.....” [Emphasis mine]

13. There were two Victim Impact Statements. One was contained in the Pre-Sentencing Report dated 7th November 2023 which stated that the victim's mother was not willing to forgive the Accused and that she would rather the Accused to be sentenced to death. It alleged that the Accused had once visited her home and left with a warning that she would kill the deceased if he went near her premises. The Report further stated that the victim's father was at a loss because of his son's death.
14. The Pre-Sentencing Report quoted the victims as stating that they had not been visited by the Accused's relatives as would be the norm in their community. The victim's mother stated that she still



bore bitterness and anger and she was not willing to see the Accused back in the society as her safety would not be guaranteed.

15. At the request of defence counsel, the court directed the Probation Office to file a fresh Victim Impact Statement. A Supplementary Victim Impact Statement Report was filed on 23rd November 2023. This Report contained similar findings to the earlier Report. In addition to the first Report, this Report stated that the victim's siblings also had to deal with the loss of their kin and wanted justice to prevail. The Report further stated that the victim's family incurred a huge medical bill at Tenwek Hospital and had to use their neighbour's Title Deed to secure the victim's body.
16. The Report stated that the position of the victim's family was that the Accused did not contribute towards the deceased's hospital bill. That the family of the co-accused, Weldon Chirchir gave them Kshs 350,000/= to cater for funeral expenses.
17. The conclusion of the Report was that the victim's family were still aggrieved and bitter towards the Accused and there had been no reconciliation efforts. The victim's family wanted the Accused to be jailed.

### **Mitigation**

18. The Accused submitted through her counsel, Mr. J.K.Koech who made oral submissions in open court. He submitted that the Accused was remorseful and her remorse was demonstrated when she and her co-accused paid the deceased's hospital bill.
19. Counsel submitted that the weapon that the Accused used to hit the deceased showed that she had no intention of killing the deceased. That she had learnt a lot while in custody. Counsel further submitted that the Accused regretted her actions.
20. It was counsel's submission that the Accused had always been willing to plea bargain and that showed regret on her part. Counsel further submitted that the Accused prayed for leniency and that this court should give her a second chance and grant her a non-custodial sentence.
21. The State through Prosecution Counsel Mr. Njeru submitted that the Accused was a first offender. The State further submitted that the commotion in the bar was started by the deceased. The State left the sentencing to the court's discretion.
22. Sentencing serves multiple purposes as enumerated in the *Sentencing Policy Guidelines 2023* which outline the objectives of sentencing at paragraph 1.3.1 as follows:-

Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other- in so far as possible, sentences imposed should be geared towards meeting the objectives in totality.

- i. Retribution.
- ii. Deterrence.
- iii. Rehabilitation.
- iv. Restorative justice.
- v. Community Protection.
- vi. Denunciation.
- vii. Reconciliation.



viii. Reintegration.

23. The penal section for the offence of manslaughter is contained in section 205 of the [Penal Code](#) which provides:-

Any person who commits the felony of manslaughter is liable to imprisonment for life.

24. I have considered the circumstances of the case. The Accused and her co-accused Weldon Chirchir got into a physical altercation with the deceased who was drunk. The deceased was slapped by Weldon Chirchir and he got very angry. The deceased then slapped the Accused and the Accused responded by hitting the deceased on the head with a beer bottle. From the facts of the case that were read out, the deceased fell to the floor after being hit with the beer bottle and bled. The co-offender Weldon Chirchir then stepped on the deceased's head when he was lying on the floor.

25. I have noted that the deceased was the aggressor on that material day and that the Accused's co-offender one Weldon Chirchir was said to have inflicted greater injury on the deceased.

26. I have also considered the Pre-Sentencing Report which painted the Accused as having questionable social character and had a tendency to be angry and violent towards community. The Report also stated that the crime was cruel and heinous and that the Accused was unsuitable for a non-custodial sentence. The Probation Officer quoted the deceased's family as having denied that the Accused family had ever reached out to them for reconciliation. They stated that the Accused refused to contribute to the burial and medical bills on the deceased and had not made any gesture towards reconciliation.

27. I have also considered the Accused's mitigation that she was a first offender, she was remorseful. That she and her co-accused had paid the deceased's hospital bills. I have also considered the fact that she has saved this court judicial time by pleading guilty to the lesser charge of manslaughter and was willing to plea bargain from the very beginning.

28. It is regrettable that a life was lost. Even if the deceased was the aggressor, no one should take the law into their hands. The Accused should have reported the deceased to the police and thereafter press charges.

29. In the final analysis, I have come to the conclusion that the Accused was not suitable for a non-custodial sentence. A lenient custodial sentence will aid in her rehabilitation.

30. The Accused is sentenced to serve 7 years' imprisonment with effect from today. In arriving at this sentence, I have taken into consideration the period already spent in pre-trial custody.

Orders accordingly.

**JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 11TH DAY OF APRIL, 2024**

.....

**R. LAGAT-KORIR**

**JUDGE**

Judgement delivered in the presence of the Accused, Mr. Njeru for the State, Mr. Kipngetch holding brief for Mr. J.K. Koech for the Accused, and Siele (Court Assistant)

