



**Republic v EKL (Criminal Case E008 of 2023)  
[2024] KEHC 5493 (KLR) (11 April 2024) (Sentence)**

Neutral citation: [2024] KEHC 5493 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CRIMINAL CASE E008 OF 2023**

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

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**EKL ..... SUBJECT**

**SENTENCE**

1. The Subject, Enock Kipkoech Langat 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 1st May 2023 at Kimatisio Village, Itembe Location within Bomet County, the Subject murdered Shadrack Kipkirui.
2. On 13th June 2023, the Subject took plea and pleaded not guilty to the offence and was remanded at Kericho Juvenile home pending trial.
3. When the matter came up for trial the learned Prosecution counsel informed the court that he had a draft Plea Bargaining Agreement dated 15th November 2023. The Plea Agreement indicated that the Subject had agreed to plead guilty to the lesser offence of manslaughter.
4. On 30th November 2023, this court accepted the Plea Agreement after interviewing the Subject and satisfying itself that he understood his rights and process and that he had executed the Plea Agreement voluntarily.
5. On the same day (30th November 2023), the Subject took plea for the offence of manslaughter. The charge and every element thereof was read and explained to him in a language he understood (Kipsigis) and the Accused responded, "Yes it is true". The court entered a plea of guilty for the offence of manslaughter.
6. The Prosecutor read out the facts which are also contained in the Plea Agreement are as follows:
7. The facts as captured in the Plea Agreement are as follows:-



The facts are that on the 1st of May 2023, the deceased one Shadrack Kipkirui aged 25 years, who is an uncle to the subject herein and they live in the same homestead, was at home when the subject aged 17 years, confronted him demanding that the deceased return the phone and a fight ensued between them. The Subject took a wooden stick and hit the deceased at the back of the head with tremendous force. The Subject ran away from the scene leaving the deceased unconscious and lying on the ground.

Later on, one Mary Mutai, the mother of the deceased and grandmother of the Subject, found the deceased having since passed away at the scene. The matter was reported to the area administration who also contacted the police who came and carried the body of the deceased to Longisa County Morgue. A Postmortem was conducted on the deceased and it was confirmed that he died as a result of severe hemorrhage secondary to blunt force trauma which severed the jugular vein.

The Subject later surrendered to the police at Bomet Police Station. We admit that the Subject is a minor and younger than the deceased. Secondly, we also admit that the deceased was a troublesome fellow who had previously created disturbance at their home but was not charged with any offence before court.

8. The Subject stated that the facts were true and was consequently convicted on his own guilty plea for the lesser offence of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#).

### **Pre-Sentencing Report**

9. The Pre-Sentencing Report prepared by the Chepalungu Sub County Children's Officer dated 16th January 2024 was filed on 17th January 2024. In this report the Children's officer stated that the Subject's parents had separated when he was young and he was being taken care of by his grandmother. The Report further stated that the Subject was attending Kabisoge Vocational Training Centre where he was training as a Mason.
10. The Report recommended that the Subject needed counselling and to be engaged in training. It was the Report's further recommendation that the Subject to be put under the supervision of the Children's office until he was 18 years of age.

### **Mitigation**

11. Through the submissions dated 5th December 2023, filed by learned counsel Kipngetich, the Subject submitted that he was 17 years of age and he was studying masonry. That his detention would not only affect his future but also his career.
12. Counsel urged this court to consider the circumstances of the offence. That the deceased was known for habitually assaulting his relatives. That the deceased and the Subject fought over a mobile phone and in self-defense, the Subject hit the deceased on the back of his head which caused a fatal injury.
13. Counsel's submitted that the subject was a first offender and that he surrendered himself to the Police. That he was a law abiding citizen, was of good character and that the community did not regard him as a threat. That the subject was remorseful and he pleaded for mercy.
14. Counsel urged the court to grant a non-custodial sentence placing reliance on Section 190 of the [Children's Act](#). He pleaded with the court to consider the subjects age and the impact his detention would have on his family.



15. On 28th November 2023, Mary Mutai and Richard Mutai who were the Subject's grandmother and grandfather respectively, addressed this court in their capacity as both victims and the offended family. They stated that they had come to terms with the loss of their son (deceased). That they had forgiven the Subject and no longer wished to pursue the case.
16. On 6th December 2023, Faith Chepngetich who was the Subject's mother addressed the court pleaded with the court to forgive her son.
17. The State through learned prosecution counsel Mr. Njeru submitted that the Subject was a first offender and he prayed that he be sentenced in accordance with the *Children's Act*.
18. I have considered the Pre-Sentencing Report from the Children's office. The Report showed that the Subject was attending Kabisoge Vocational Training Centre where he was training as a Mason. The Report further indicated that the Subject needed intensive counselling.
19. I have also considered the circumstances of the offence. It was clear from the statement of facts that the deceased was a troublesome fellow who had previously created disturbance in their home. While fighting over a mobile phone, the Subject caused a fatal injury to the deceased when he hit the deceased at the back of his head with a wooden stick. It was clear to this court therefore that the fatal blow was on the spur of the moment and not premeditated.
20. 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.
21. I have considered the Subject's mitigation and the oral submissions by his mother and grandparents. The Accused, no doubt is now repentant having reflected on his rash action.
22. 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.
23. However, it was clear from the proceedings that the Subject was 17 years of age at the time of the commission of the offence and was therefore considered a minor.
24. The *Children's Act* No 29 of 2022 defines a child as individual who has not attained the age of eighteen years. Section 8 (1) and (2) of the same Act provides that:-



- (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—
    - (a) the best interests of the child shall be the primary consideration;
    - (b) the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule.
  - (2) All judicial and administrative institutions, and all persons acting in the name of such institutions, when exercising any powers conferred under this Act or any other written law, shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to—
    - (a) safeguard and promote the rights and welfare of the child;
    - (b) conserve and promote the welfare of the child; and
    - (c) secure for the child such guidance and correction as is necessary for the welfare of the child, and in the public interest.
25. Section 238 of the *Children's Act* No 29 of 2002 provides that:-
- (1) No court shall order the imprisonment of a child.
  - (2) Notwithstanding the nature of any offence punishable by death, no court shall impose the death penalty on a child on a finding of guilty for such an offence.
  - (3) A Children's Court shall not make any order to send a child under the age of twelve years to a rehabilitation school.
  - (4) The performance of community service under an order of the Court shall be in accordance with the Community Service Orders Act (Cap. 93).
26. This court has various options on how to punish a child in conflict with the law. Section 239 of the *Children's Act* No 29 of 2022 provides that:-
- (1) Where a child is tried for an offence, and the Court is satisfied as to their guilt, the Court may deal with the case in one or more of the following ways—
    - (a) discharge the child under section 35(1) of the *Penal Code* (Cap. 63);
    - (b) discharge the child on his or her entering into a recognisance, with or without sureties;
    - (c) make a probation order against the offender under the provisions of the Probation of Offenders Act;
    - (d) commit the offender to the care of a fit person, whether a relative or not, or a charitable children's institution willing to undertake the care of the offender;
    - (e) if the child is between twelve years and fifteen years of age, order that the child be sent to a rehabilitation institution suitable to the child's needs and circumstances;
    - (f) order the child to pay a fine, compensation or costs, or any or all of them, having regard to the means of the child's parents or guardian;
    - (g) in the case of a child who has attained the age of sixteen years, deal with the child in accordance with the Borstal Institutions Act;



- (h) place the child under the care of a qualified counsellor or psychologist;
  - (i) order that the child be placed in an educational institution or vocational training programme;
  - (j) order that the child be placed in a probation hostel under the provisions of the Probation of Offenders Act;
  - (k) make a community service order;
  - (l) make a restorative justice order;
  - (m) make a supervision order;
  - (n) make any other orders of diversion provided for in this Part; or
  - (o) deal with the child in any other lawful manner as may be provided under any written law.
- (2) A child against whom a community service order has been made may, having regard to the child's age and development, be required to perform the service without remuneration, or for the benefit of the community, under the supervision or control of an organization or institution identified by the probation officer.
- (3) In addition, or as an alternative, to the orders prescribed in subsection (2), the Court may impose on a child such other sanctions as the Court may consider just.
- (4) Any community service performed by a child shall be for a maximum period of fifty hours, and shall be completed within a period not exceeding six months.
- (5) If a child fails to comply with any condition imposed on diversion, the Court shall make such orders as it considers fit, including an order directing that the child to be subjected to an alternative level of diversion.
- (6) The orders imposed on a child upon a finding of guilt shall be proportionate to the circumstances of the child, the nature of the offence and the public interest, and a child shall not be treated more severely than an adult would have been treated in the same circumstances.

27. It is trite that the court has discretion in sentencing. Having considered the circumstances of the case, the Subject's voluntary acceptance of liability, the Children's Officer's Report and the Subject's mitigation, it is my finding that the most suitable punishment to be meted upon the Subject is a Probation order.

28. The offender shall serve 3 years' Probation. During the Probation period, he shall continue with attending school or vocational skills training to completion.

Orders accordingly.

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

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**R. LAGAT-KORIR**

**JUDGE**



**JUDGEMENT DELIVERED IN THE PRESENCE OF MR. NJERU FOR THE STATE.  
APPELLANT PRESENT IN PERSON AND SIELE (COURT ASSISTANT)**

