



**Republic v Cheruiyot (Criminal Case E001 of 2023)
[2024] KEHC 5486 (KLR) (11 April 2024) (Sentence)**

Neutral citation: [2024] KEHC 5486 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE E001 OF 2023**

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

BETWEEN

REPUBLIC PROSECUTION

AND

AMOS KIBET CHERUIYOT ACCUSED

SENTENCE

(Judgment and Sentence Upon Plea Agreement)

1. The Accused, Amos Kibet Cheruiyot 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 25th December 2022 at Manyatta Village in Bomet Central Sub-County within Bomet County, the Accused murdered Amos Keter.
2. On 21st February 2023, the Accused took plea after the charge and every element thereof had been read and explained to him in the English language, a language he elected and understood. The Accused pleaded not guilty to the offence and a plea of not guilty was entered by the court.
3. The Prosecution presented a Plea Bargaining Agreement dated 25th October 2023. The Plea Agreement indicated that the Accused had agreed to plead guilty to the lesser offence of manslaughter.
4. On 25th October 2023, this court accepted the Plea Agreement after interviewing the Accused and satisfying itself that he executed the Plea Agreement voluntarily.
5. On the same day (25th October 2023), the Accused 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, "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 24/12/2022, at about 1300hrs, the Accused Amos Kibet Cheruiyot and the deceased Amos Keter were at Kipkeneni Shopping Centre Kapsimotwo Location. They were playing a game of cards. The deceased won. He demanded Kshs 30 from the Accused as agreed. The Accused declined and a fight ensued. The Accused picked a stone and pelted it at the deceased. He then picked a wooden rod and hit the deceased on his head. The deceased fell down and lost consciousness.

The deceased was rushed to Chelymo Hospital for first aid and later to Tenwek hospital where he succumbed to his injuries on 25/12/22 while undergoing treatment. On 29/12/22, a post mortem was performed on the body of the deceased at Tenwek Hospital and the cause of death was ascertained as head injury due to blunt force trauma. The murder weapon was not recovered.

The Accused was later arrested, arraigned in court and charged with murder which offence has now been commuted to a charge of manslaughter.

7. The Accused stated that the facts were true and the court convicted him on his own guilty plea. For clarity, the Accused was convicted for the lesser offence of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#).
8. Prior to the sentencing hearing, the court called for a Pre-Sentencing Report was prepared by the Probation Officer, Bomet County on 7th November 2023 and filed on 8th November 2023. The Report stated that the Accused was of poor conduct and given to violence. He was disrespectful to his guardian (uncle) and his mother. The Report further stated that the Accused was in the habit of regularly issuing death threats to anyone who crossed his path.
9. The Report stated that the community was of the view that the Accused was better off in the hands of the law due to his violent aura and persistent death threats. That the Accused absconded school and threatened anyone who dared to ask him about his conduct.
10. The Report's recommendation was that the Accused was not suited for a non-custodial sentence.
11. The court is required by the [Victim Protection Act](#) 20 to take into consideration the views of the victims or the victim impact statement.
12. In [Jacob Kirimu Kabiru vs Republic](#) (2010) eKLR, the Court of Appeal held that:-

“We believe that the restricted right of appeal where a bargain has been struck is to assist in speeding up the process and to attain finality at the earliest time possible. However, we note that the superior court even after realizing that the plea was based on a plea bargaining agreement did not consider the mandatory provisions of section 137 I (2) of the [Criminal Procedure Code](#) and in particular, the need to take into account a victim impact statement. In our view, such a victim impact statement would have been necessary.....”

13. The Probation Office filed a victim impact statement after interviewing the victims of the offence, the victim's mother stated that she had yet to come to terms with the loss of her son. That the deceased was a visionary and hardworking young man who was determined to make a difference in his life. The victim's mother further stated that her family and the victim's family were neighbours and the Accused's uncle was persistent in his reconciliation efforts between the two families and that it was through those efforts that both families had continued living peacefully. They however, desired that



the Accused should be dealt harshly by the court and expressed hope that they would get justice for the loss of their son.

14. Mr. Barusei learned defence counsel filed submissions in mitigation dated 15th November 2023. He submitted that did not intend to kill the deceased. That the Accused was remorseful and apologetic for the unfortunate event and pleaded for leniency.
15. It was the Accused's submission that he had saved judicial time by pleading guilty to the lesser offence of manslaughter was a first offender; had exhibited good character while in custody and was thus entitled to benefit from a less severe sentence.
16. The Accused submitted that he was committed to repair the harm he caused through reconciliation with the deceased's family.
17. It was the Accused's submission that the punishment of a life sentence that is imposed by section 205 of the [Penal Code](#) was reserved for the most serious of offences. That he did not deserve a life sentence.
18. At the sentencing hearing, the Accused addressed the court and asked this court to forgive him. He told the court was needed back home to assist his parents and prayed for a non-custodial sentence.
19. The State through the learned prosecution counsel Mr. Njeru submitted that the Accused was a first offender. He submitted that from the Social Inquiry Report, the Accused was a violent person who did not respect his mother and uncle. He asked the court to impose a substantial custodial sentence to the Accused to aid in his rehabilitation.
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. 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.
 22. I have considered the circumstances of the case. The Accused and the deceased got into a fight after a disagreement over a game of cards. The Accused got hold of a wooden rod and struck the deceased on the head causing him a fatal injury. These facts clearly show that the ugly fight was not premeditated. They however, show a predisposition to violence.



23. I have also considered the Pre-Sentencing Report which painted the Accused as a truant, disrespectful and violent man. That he was in the habit of issuing death threats to anyone that challenged him. The victim's family and the community at large advocated for the Accused to be punished harshly by this court.
24. Further, considered the Accused's mitigation that he was a first offender, he was remorseful, that he had reformed and that he had exhibited good conduct while in custody. I have also considered the fact that he has saved this court judicial time by entering into a plea agreement.
25. The Accused stated in his mitigation that a non-custodial sentence would enable him go home and assist his mother raise his siblings. It was clear from the Pre-Sentencing Report however that the accused was disrespectful to his mother and violent towards his Uncle who had raised him in the absence of the father who was said to be deceased and his mother who was said to have abandoned him when she left her matrimonial home.
26. It is apparent to this court therefore that the accused had a disturbed childhood which though not initially of his making, made him anti-social and contributed to his propensity to crime.
27. It is my finding, after taking into consideration all the aforesaid factors that the Accused was not suitable for a non-custodial sentence. While I acknowledge that the remorseful for his commission of the present offence, his antecedents demonstrate that he would benefit from prison rehabilitation. There was no demonstration in the Pre-Sentence Report of a supportive home and community environment to aid in his rehabilitation. Further, a custodial sentence would be a determination to other like-minded persons who do not value human life.
28. In the end I will temper justice with mercy and grant the Accused a lenient prison term and not the maximum sentence of life imprisonment provide in Section 205 of the [Penal Code](#).
29. May I point out that it was hypocritical for the Accused to ask this court to release him so that he could go home and assist his parents. It was clear from the Pre-Sentencing Report that the Accused was disrespectful to his mother and violent towards his uncle and these were the same people that the Accused claimed he wanted to assist upon his release.
30. Flowing from the above and in the exercise of my discretion, it is my finding that the Accused should serve a deterrent sentence. Even though the Accused was remorseful after having time to reflect over his actions, the fact is that a life was lost and the Accused must serve a custodial sentence as punishment and a deterrence to other like-minded people in the society.
31. The Accused will benefit from the mercy of this court and he will be spared the maximum sentence which is life imprisonment.
32. The Accused shall serve 7 years imprisonment from today. This sentence has taken into consideration the time he has spent in pre-trial custody.

Orders accordingly.

JUDGMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 11TH DAY OF APRIL, 2024.

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R. LAGAT-KORIR
JUDGE



Judgment delivered in the presence of the Accused, Mr. Njeru for the State. Appellant present in person and Siele (Court Assistant)

