



**Republic v Chepkwony (Criminal Case E017 of 2022)  
[2024] KEHC 3243 (KLR) (4 April 2024) (Sentence)**

Neutral citation: [2024] KEHC 3243 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE E017 OF 2022  
RB NGETICH, J  
APRIL 4, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**KIPKOECH CHEPKWONY ..... ACCUSED**

**SENTENCE**

1. The accused person had been charged with the offence of murder contrary to section 203 as read with Section 204 of the *Penal Code*. The particulars of the charge being that the accused on the 1<sup>st</sup> day of September, 2022 at unknown time at Bakwanin village, Kabasis Location, Sacho village within Baringo central Sub-County in Baringo County murdered Victor Koech.
2. The charge was read over and explained to the accused who denied the charge and the matter was set down for hearing. However, when the matter came up for hearing on the 7<sup>th</sup> February, 2024, the defence counsel Mr. Mbeche informed the court that the accused and his family are proposing to have the matter terminated, he requested for time to file a formal request for plea bargaining. The prosecution in response stated that they had received a letter from the family that the family met and performed some rites according to their culture. The court directed that the matter be mentioned on the 15<sup>th</sup> February, 2024 to confirm the plea-bargaining process.
3. On the 15<sup>th</sup> February, 2024 the plea agreement was duly executed and the charge was reduced to manslaughter. The charge of manslaughter and its full particulars were read over and explained to the accused who pleaded guilty and was convicted on his own plea of guilty.

**Brief facts of the case**

4. Facts as read out by the prosecution are that on the 1<sup>st</sup> of September, 2022, the accused person arrived at his home at around 1800hrs appearing agitated. He found his wife Hellen Sote at home. He then



remarked "kitambo nimekua nikisema kwamba nitauwa watu wawili ama hamnijui" before slapping his wife.

5. He then took an axe in an attempt to hit his wife with it. His wife managed to get hold of the handle and blocked the accused from hitting her with the axe. The accused fell and his wife managed to run away. The accused's wife run towards the shamba, where she met their son Victor Koech the deceased herein who had gone to fetch water from his grandmother. The accused's wife told the deceased not to talk to the accused since he was very angry.
6. At around 1850hours, one David Kiptoo heard screams of someone crying for help. The sound led him to the house of the accused. On reaching the house, he found the deceased lying in a pool of blood and the accused was not in the house. David decided to go and inform one Charles Kiplagat about the incident. Together they decided to inform the village elder before going back to the scene. The village elder hurried to the scene using his motorcycle and on reaching the scene, he found the accused still armed with the panga. The accused continued inflicting injuries on the neck of lifeless body of the deceased in the presence of the village elder who begged him to stop but the accused did not stop. The village elder decided to go and get other people to help him disarm the accused.
7. On his way, the village elder met David Kiptoo and 2 other men. Together they came up with a plan and managed to disarm the accused. The accused's hands and legs were then tied. The police were informed and they went to the scene where they arrested the accused and moved the body of the deceased to Baringo County referral hospital for autopsy which was done on 12<sup>th</sup> of September, 2022 by Dr. Mercy. She formed the opinion that the cause of death was as a result of Hemorrhage due to multiple cut wounds on the neck caused by a sharp object.
8. The accused was interrogated on the 8<sup>th</sup> of September, 2022 where he admitted to killing the deceased but indicated that his son, the deceased was drunk and that it was his son that attacked him first using a rungu. The rungu was however not recovered by the police at the scene. The police file was compiled and the accused herein charged with the offence of murder contrary to section 202 as read with 204 of the CPC now reduced to manslaughter.

### **Pre-sentence Report**

9. The court called for a pre-sentence report to be filed before mitigation and it was filed on the 27<sup>th</sup> February, 2024. From the report, two brothers of the accused who were interviewed stated that the offender had a normal childhood but dropped out of school in primary level in class 7 due to his own accord. They stated that the accused and his deceased son frequently had squabbles whenever either one or both of them were under the influence of alcohol. They said the offender is the breadwinner for his family and therefore the family had a meeting where the spouse and the children of the offender were present and the offender asked for forgiveness. The family agreed to forgive him and they pray that the offender be sentenced to serve a non-custodial sentence so that he can continue to provide for his family especially paying school fees for his children who are still in secondary and primary school as well as those awaiting to join tertiary education institutions.
10. The accused is married with 7 children. The wife stated that the offender asked for forgiveness and she has forgiven him completely. She further indicated that they have already done the cleansing rituals and she is therefore ready to welcome the offender back home and urged the court to impose a non-custodial sentence as this will enable him resume his role as a parent and a husband.
11. The probation officer also interviewed accused's 2 sons and a daughter and they stated that as much as they miss their brother, they have forgiven the accused who is their father and prayed for a non-



custodial sentence so that he can pay school fees for them and if he is incarcerated, their future may be compromised.

12. The offender admits he takes alcohol but he has reduced consumption and is working towards stopping it in the long run. He confirmed that he is of sound health. He also admits having committed the offence and explained that he fought with his son the deceased herein after he realized the deceased had slapped his last-born son. He said he took a panga from the deceased and he cut him on the neck. He said both him and the deceased were under the influence of alcohol when the offence took place and confirmed that they had a history of conflict when under the influence of alcohol and would reconcile when they got sober.
13. The area chief confirmed that the family met and have forgiven the accused and villagers did not show any animosity towards the accused while he was out on bond and as local administration, they do not oppose a non-custodial sentence. He indicated that a non-custodial sentence would enable the offender to take care of his family and provide school fees for his children so that they can further their studies. The probation officer recommended a non-custodial sentence and said they are ready to participate in his rehabilitation.

### **Mitigation**

14. The defence counsel Mr. Mbeche mitigated on his behalf. He submitted that the accused is remorseful for the circumstances that led to his actions and during the time he was out on bond before plea bargaining, he made substantive efforts by making reconciliatory overtures to the immediate family and people around him. He submitted that he is concerned of his actions and wish to be given an opportunity to be with his family and continue to be a responsible parent to his children. He prays to be given an opportunity to reconcile with his family and said the loss was occasioned to him and his family. He said he lost a son and he undertake not to allow rage get the better of him in future.
15. The state counsel Ms. Ratemo submitted that she has perused the pre-sentence report and she is aware of reconciliation between the accused and the family. She submitted that on the part of the state, they are leaving the aspect of sentence to the discretion of the court.

### **Determination**

16. Under section 205 of the *Penal Code* a person convicted of Manslaughter is liable to imprisonment for life. Life sentence was however declared unconstitutional by the court of appeal in Malindi case Malindi Court of Appeal Criminal Appeal No. 12 of 2021, *Julius Kitsao Manyeso Versus Republic*. In view of the above, the court has discretion to impose determinate sentence or any other sentence depending on circumstances of each case.
17. I have considered circumstances of this case. Both the accused and deceased being father and son respectively were drunk at the time they quarreled and the quarrel degenerated into a fight and in the process, the deceased went for a panga which the accused snatched from him and cut him inflicting injuries which resulted to his death.
18. I have considered the fact that the accused has taken steps to seek forgiveness from his family who have confirmed that they have forgiven him. The local administration have also confirmed that the family forgave accused and they are all agreeable to accused being released on probation. The local administration confirmed that while accused was out on bond, there was no hostility toward him from either his family or the community. They are all ready to receive the accused back and are willing to assist in reintegration of the accused into the community. In view of the above, I find accused suitable for probation sentence and will proceed to place him on probation.



**Final Orders: -**

1. Accused is sentenced to 3 years' probation sentence.
2. Right of appeal 14 days.

**RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 4<sup>TH</sup> DAY OF APRIL 2024.**

**RACHEL NGETICH**

**JUDGE**

In the presence of:

CA Sitienei.

Mr. Mbeche for the Appellant.

Ms. Ratemo for state.

