



REPUBLIC OF KENYA



**Republic v Chepkwemoi (Criminal Case E001 of 2023)  
[2024] KEHC 5481 (KLR) (17 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 5481 (KLR)

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

**DK KEMEL, J**

**MAY 17, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**VELLA CHEPKWEMOI ..... ACCUSED**

**SENTENCE**

1. Vella Chepkwemoi was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars are that on the 5<sup>th</sup> day of January, 2022 at about 9.00 pm at Tindi Bare within Emia Location, Cheptais Sub-County within Bungoma County jointly with others not before court murdered Gilbert Naibei.
2. Vide a Judgement dated April 19, 2024, the accused was found guilty and convicted accordingly.
3. During the sentence hearing conducted on 2.5.2024, Mr. Muyala for the accused submitted that the accused is remorseful and that she is a first offender and breadwinner for her family. He submitted that the deceased will need to take care of the children who are likely to be rendered total orphans.
4. Miss Kibet for the prosecution submitted that the accused has no previous record but nonetheless a life was lost.
5. This court called for a pre – sentence report which was duly filed on 2.5.2024. The same indicates that the deceased was the accused’s husband with whom they had lived for twenty years and had three children. It further indicates that the accused denies committing the offence herein and maintains that her husband was killed by robbers who were after his money which were proceeds from the sale of a cow earlier in the day. The report also indicates that the accused interacts very well with members of the community and that they have no problem with her. However, the probation officer during her enquiries noted that the accused has some anger related issues and irrational decision making.



6. I have considered the oral submissions of both learned counsels as well as the pre-sentence report. Under section 204 of the *Penal Code*, the punishment for murder is a sentence of death. However, following the decision of the Supreme Court in *Francis Karioko Muruatetu & 2 Others v R* [2017] eKLR, the mandatory nature of death sentence was declared unconstitutional and that courts should receive mitigation circumstances from the offender before imposing an appropriate sentence thereafter. The court could still pass a sentence of death if circumstances warrant it.
7. The circumstances leading to the death of the deceased are rather tragic in that the deceased who was husband to the accused was found in the house lying next to his bed while having injuries on his head and that there was a rope dangling above the body. There were bloodstains on the floor. There were signs that the deceased had been killed within his compound and that the body was placed inside the house. The post mortem report indicated deep cut wounds on the head, deep cut wounds on the neck, bruises on the knees. The pathologist (PW6) formed the opinion that the cause of death was head injury secondary to assault. The accused abandoned the deceased and went and spent the night at her brother's house and hence the deceased must have died a painful death as there was nobody to attend to him. The accused had stated in her defence evidence that the deceased had been pestering her to conceive another child despite challenges and hence she decided to get rid of him. The deceased did not deserve to die. Had the accused resorted to involving his family members and the clan elders for an amicable resolution, the deceased could be alive today. It also transpired from the evidence that the accused had engaged some other accomplices to eliminate her husband and that she was with them before she left to spend the night at her brother's house while aware of what she and her accomplices had done until the following morning. The accused ought to have resorted to other channels for redress such as engaging the clan elder or chief or seek legal redress in the courts for separation or divorce if need be if she had had enough of the marriage but not to eliminate the deceased. The death of the deceased was thus not warranted at all. The pre-sentence report indicates that the accused has some anger related issues as well as irrational decision making. I find the circumstances of the offence herein require a custodial rehabilitation.
8. Regarding the sentence to be imposed, it is trite that sentence imposed on an accused must be commensurate with the moral blame worthiness of the offender and that the court must look at the facts and circumstances of the case in their entirety. See *Ambani vs R* (1990) eKLR. The accused organized with some accomplices to eliminate the deceased who had become a bother as he used to harangue her and blame her for not conceiving for him more children. The deceased thus died a very painful death while the accused upon committing the offence with her accomplices just sauntered to her brother's house nearby to spend the night while the deceased lay writhing in pain until he died from the injuries inflicted on him. The conduct of the accused revealed her as a cold and cruel woman who did not have any regard for her husband of twenty years. It is noted that the accused has been in custody all through the trial. This period will be taken into consideration. The custodial rehabilitation will benefit the accused even though she still has a full life ahead of her. The custodial rehabilitation will help to mould her into a better individual before being released back to the society.
9. In the result, I order the accused herein Vella Chepkwemioi to serve a sentence of twenty ( 20 ) years' imprisonment which shall commence from the date of arrest namely 6.1.2022.

**DATED AND DELIVERED AT BUNGOMA THIS 17TH DAY OF MAY 2024.**

**D. KEMEI,**

**JUDGE.**

In the presence of :-



Vella Chepkwemoi Accused  
Wekesa for Mechi for Accused  
Miss Kibet for Prosecution  
Kizito Court Assistant

