



**Republic v CKE (Criminal Case E012 of 2023) [2024] KEHC 5070 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5070 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE E012 OF 2023  
RB NGETICH, J  
MAY 9, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**CKE ..... ACCUSED**

**RULING**

1. The accused person was 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 23<sup>rd</sup> Day of May, 2023 at unknown time at [Particulars Withheld] village, Kaptum Sub-location, [Particulars Withheld] Location in Baringo North Sub- County within Baringo County murdered MK.
2. The charge and its full particulars were read over and explained to the accused who denied and the matter was set down for hearing. However, when the matter came up for mention on the 20<sup>th</sup> September, 2023 for purposes of fixing a hearing date, the defence counsel Ms. Kogo informed the court that they wish to explore plea bargaining and that they were to make a formal a request to the DPP.
3. On 5<sup>th</sup> March, 2024 plea agreement was duly executed which in effect reduced the charge from murder to manslaughter contrary to section 202 as read with section 205 of the penal code. The accused pleaded guilty to the charge and was convicted on his own plea of guilty.

**Brief Facts of the Case**

4. On the 23<sup>rd</sup> day of May, 2023 at around 8:00 a.m, one MCB left her house to do casual work of tilling land leaving behind her 3 year old grandson MK the deceased herein playing outside the house as his second born son CKE was in his house which about 10 meters from the main house.



5. On the way she called his son C and gave him Kshs.20 to buy for himself mandazi and requested him to take the deceased later to where she was which he agreed and as she was tilling the land, she could see the deceased from far playing with other children from the neighborhood.
6. While in the farm, her daughter EE a grade three pupil at [Particulars Withheld] Primary School who had gone home for lunch went to inform her that the accused CKE, had locked himself inside the house and refused to open despite knocking the door severally. She further informed her that she had peeped through the window in the sitting room and had seen the accused sited on the floor in a corner behind the door holding a cup in his hand. The accused's mother did not act immediately as she was not told which house the accused was. Shortly thereafter, her sister in law RJ went to inform her that she suspected something bad had happened at her home. She informed M that the accused had locked himself inside her main house. She rushed to her house and found the door locked from inside. She peeped through the window and saw the accused seated on the floor in the sitting room sipping something from a cream cup and the deceased was lying on the sofa set facing upwards. M did not talk to the accused neither did he talk to her.
7. She instead broke the wooden part of the wall below the window using a hammer, entered through the opening and got hold of her grandchild's leg and noticed there was no movement from him. She also saw a lot of blood on the sofa set. M left the scene screaming. Her screams attracted many people who included neighbours and relatives among them was Pius Koros who persuaded the accused to open the door for them but he did not respond to their pleas prompting them to forcefully break the door and gained entry into the house.
8. Upon entering the house, M realized that her grandson the deceased herein was dead; he had several stab wounds caused by a sharp object on his body. A blood-stained kitchen knife with a cream yellow handle which she identified as hers was recovered from the sofa set. Also recovered was a cream cup on the floor with some water inside.
9. The accused was led out of the house by the public and upon being asked why he had killed the deceased, he could not utter any word to them. The area chief Mr. Kandie was informed and he later informed the police who went to the scene and re-arrested the suspect who had no physical injuries but appeared confused. The scene was processed and exhibits collected by the police.
10. The accused was escorted to Kabarnet Police station while deceased's body was taken to Baringo County Referral Hospital mortuary at Kabarnet. On 30<sup>th</sup> day of May, 2023, postmortem was conducted on the body of the deceased by Dr. Wangare who formed opinion that cause of death was sharp force trauma consistent with stab wounds following assault.
11. 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 upon request for plea bargain.

### **Pre-Sentence Report**

12. The court called for a pre-sentence report to be filed before mitigation and was filed on the 4<sup>th</sup> April, 2024. The report indicates that the accused person is aged 24 years old. He is the son of EK who is a police officer currently stationed at Menegai Police station within Nakuru County and the offender's mother is a house wife. The offender is the only one with criminal history and he is the second born in a family of nine sibling. He did his KCSE in the year 2018 and managed to score mean grade of C Plain at Kipsangui High School. After completing his secondary education, he started doing casual jobs within the community. The report indicate that he is single, he does not take alcohol and is suffering



- from chest pains but on medication. He indicated that he committed the offence under the influence of alcohol and he thought he was fighting back a crowd that was attacking him while drunk.
13. The accused prays for forgiveness and for non-custodial sentence so that he can re-start his life afresh. He indicates that he would like to continue with his education by joining college. He prays for a non-custodial sentence and says if released, he will relocate to his aunt's home who resides at Eldama Ravine. During the social inquiry, the father opposed his idea of relocating to his aunt's place but preferred to stay with him at his work place.
  14. The offender's father indicated that he has never known why and how the offender committed the offence. He indicated that after finishing his secondary education, he once stayed with him at his work place in Trans-Mara then and he noticed that he used to keep quiet most of the time and never mingled with the neighbors but preferred staying indoors and to him, he is not aware of his son taking alcohol. The father indicates that he has already forgiven his son indicating that it will be a great loss for him to lose two members of his family at once. He is willing to facilitate reintegration by staying with him at his work place and ensure he enrolls him to Sensei Institute or Rift Valley institute to study for any technical course since before he committed the offence, he was planning to enroll him. The father noted that he has not done the traditional cleansing as per Tugen culture but plans to do it once the offender is released. To him he has a feeling that his son's criminality is due to offences that the family ancestors committed and is being manifested on his son.
  15. The accused's mother noted that her son has never told her why he committed the offence. She is still bitter over what he did and said this is not the first offence as in December, 2022, he stabbed his brother Emmanuel but he was not charged in as his father negotiated with the police officers and after committing the said offence, he relocated to Nairobi and as a family, they did not know what he was doing. He returned home after some months and has always been restless and would walk at night.
  16. The accused's mother said the accused stole Kshs.1,500 from his brother now secondary victim and went Kabarnet and used the money. He returned home and confessed that he took the money and was able to receive ADR from close relatives and promised to change. She added that the offender did not change in character but after three days, he started informing them that he will do something and in a week's time, he committed this offence.
  17. The mother indicated that the offender's siblings do not want him at home since they still fear him, she is opposed to the father's idea that he be given non-custodial sentence on ground that the father is always absent in their children's lives and she does not see any hope in the father educating him. She prefers custodial sentence so that he can learn a skill while in custody and upon his release his re-integration will not be difficult.
  18. The probation officer indicated that the offender showed anti-social behavior for some time and was not corrected as the father spent less time with the family and that he always directed his criminality to his immediate family members.
  19. The secondary victim who is a brother to the accused works as a casual worker within [Particulars Withheld] area in Uasin Gishu County and is separated from the deceased's mother. He is opposed the idea of the accused being admitted into non-custodial sentence and she is still in fear and bitter over what the accused did. He confirmed that as a family, they have not done cleansing rituals as per Tugen culture.
  20. The area assistant chief indicated that the accused commits offences against his family members but not the community members. She is opposed to the accused being given community rehabilitation stating that the family has never hold any cleansing rituals as per Tugen culture and if released and he



should be relocated elsewhere. She confirmed that the accused's father is never present at home which has led to the children missing father figure and guidance as they grow up. From probation officer's report, the accused is not suitable for community rehabilitation as his mother is not willing to assist in his reintegration to the community.

### **Mitigation**

21. The defence counsel Ms. Kogo mitigated on behalf of the accused. She submitted that the accused is a young man aged 24 years, is a first offender, is remorseful and regrets the events of 23<sup>rd</sup> May, 2023 that led to the death of the deceased. She submitted that the accused is seeking forgiveness from this court, his family and community at large. Counsel further submitted that for the period the accused has been in custody, he has learnt a lot, he has reformed and is ready to be re-integrated to the society. That at the time of commission of the offence, the accused indulged secretly in alcohol which led him to commit the offence. Counsel stated that the accused has now reformed and he has vowed not to engage in alcohol or drug abuse. She prayed for non-custodial sentence and submitted that with the help of his father, the applicant will re-integrate in to the society. She added that the victim was a nephew to the accused and the requisite traditional cleansing is yet to be performed since customarily, it will be done when the accused is present. She submitted that accused's father is willing to take him in and enroll him in school to acquire a skill to be able to support himself.
22. The prosecution counsel Ms. Ratemo objected to any leniency being shown to the accused for the reason that the deceased was a child aged 3 years old and the nature of injury leading to the death was multiple stab wounds totaling to 7. She submitted that the child could not defend himself from the injuries inflicted on him; that the injuries were on the neck, the trunk and the ear and the motive of the accused is still not clear; that it is not clear why the accused stabbed the 3 year old child who his mother had left under his care.
23. She submitted that the mother of the accused is not willing to accept him back because he has not sought forgiveness either from her or mother of the child and urged the court to sentence the accused to a term not less than 30 years imprisonment as the child's life who was 3 years old was cut short before he could even know what he would want to be accused inflicted multiple injuries.

### **Determination**

24. Under section 205 of the [Penal Code](#) a person convicted of Manslaughter is liable to imprisonment for life. The court may impose a lesser sentence depending on circumstances of each case.
25. I have considered accused mitigation. Through his Advocate, the accused stated that he is remorseful. However, from the social inquiry report, he has not approached his mother nor the brother who is the father of the child and the mother of the child for forgiveness. The victim's parents and grandmother are still bitter. I also note that the accused killed the child in a very cruel manner by stabbing the 3-year-old child 7 times. Being an uncle to the child, he owed the child a duty to protect him and not to harm him. In view of the fact that no reconciliation has been done and also taking into consideration the age of the child and the fact that the injuries leading to death of the innocent child was inflicted in a very inhumane manner, I am inclined to impose custodial sentence so as to deter such potential offenders in the society from taking advantage of innocent defenceless children. In my view, sentence of 25 years imprisonment is appropriate in the circumstances herein.

### **Final Orders:-**

- 26.



1. Accused to serve 25 years imprisonment.
2. The period the accused served in remand to be computed in the sentence above.
3. Right of appeal 14 days.

**RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 9<sup>TH</sup> DAY OF MAY 2024.**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Elvis/Momanyi – Court Assistants.

Ms. Kogo for Accused.

Ms. Ratemo for State.

Accused present.

