



Republic v Kirui (Criminal Case 16 of 2023) [2024] KEHC 7352 (KLR) (14 June 2024) (Sentence)

Neutral citation: [2024] KEHC 7352 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 16 OF 2023
RB NGETICH, J
JUNE 14, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

ROBERT KIPCHUMBA KIRUI 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 were that the accused on the 7th day of October, 2018 at Chemeswon village, Seguton Location in Koibatek Sub- County within Baringo County, murdered Janet Kepkorir Chepkwony.
2. The charge was read over to the accused who denied the charge and the trial process commenced. However, when the matter came up for hearing on the 26th February, 2024, Ms. Ratemo, the prosecution counsel informed the court that they had two witnesses but had been informed that the victim's and the accused's family have negotiated and compensation had been paid. The court fixed the matter for mention on the 17th April, 2024 to confirm the position on plea bargain.
3. On 18th April, 2024, the plea agreement was duly executed by all the parties leading to the charge being reduced to manslaughter. On the 18th April, 2024, the charge of manslaughter as provided for under section 202 as read with section 205 of the Penal Code and its particulars were read over and explained to the accused who pleaded guilty and was found guilty and convicted on his own plea of guilty.

Brief Facts of the Case

4. On the 7th day of October 2018 at about 1500 hours the deceased herein Janet Jepkorir Chepkwony left their home at chemeswon village for Mlango Nne Trading Centre to do her business. She left her two children with her parents. The deceased had separated with her husband Robert Kipchumba Kirui who is the accused herein following misunderstanding in April, 2018. The deceased did not return



- home and on 8th October, 2018 at about 0600 hours, one Eric Kipyator Cheruiyot the chief Seguton location received a message from line No. 0700673693 requesting him to call that number. When he called back, he found that it is the accused herein talking to him and he reported to him that he had murdered his wife and the body was in a maize farm of one David Rono near one Franco's home stead. The accused further told him that he should not be looked for as he would surrender himself to police.
5. At about 1500 hours, one David Kipkoech Rono was passing by the road side next to his maize farm when he noticed a body in his farm; he alerted the chief, Eric Cheruiyot who called John Kipruto Bett the village elder and other villagers who visited the scene, and discovered that the dead body was for Janet Jepkorir Chepkwony the deceased herein.
 6. Police were notified and they visited and found the body which had a deep injury on the head, was half-naked with the under pants on the left leg, a possible sign of rape. The scene was photographed and the body taken to Eldama Ravine sub-county hospital mortuary awaiting post mortem.
 7. The accused's home which was near the scene was visited. The door had been locked from outside secured with a padlock. It was broken into and upon conducting search, a brown leather jacket with blood stains on the long sleeves was recovered hanging on a rope. It was collected and kept as an exhibit.
 8. On 10th October 2018 at about 1736hours, the accused presented himself to Gatarakwa Police Post and admitted having murdered the deceased on 7th October 2018 and at 1900hours, and gone to hiding for his own safety. He was put in cells and was transferred the following day to Timboroa Police Station.
 9. He attributed the offence to having anger arising from finding the deceased in an intimate relationship on the road side and hit her with a club which he had and thereafter carried the body to the maize farm.
 10. Later blood samples from the accused and blood-stained jacket of the accused deceased blood samples, pubic hair, hair and fingerer nails were collected and taken to government chemist for analysis for DNA.
 11. On 15th of October, 2018 postmortem was conducted on the body of the deceased Jane Jepkorir after the body being identified by Philip and David Chepkwony. The doctor formed opinion that the cause of death was as a result of Traumatic Brain Injury secondary to Assault with a blunt object.
 12. The police file was compiled and the accused charged with the offence of murder now reduced to manslaughter upon request for plea bargain.
 13. The court directed that a pre-sentence report be availed before mitigation. Pre-sentence report was duly filed on the 22nd May, 2024.

Resentence Report

14. From report, the offender was born 32 years ago. He dropped out of school in class 4 to help his father herd family livestock. When he became of age, he started farming an activity he has been doing until he was arrested for the offence herein. He was married with Two (2) children.
15. He attributed the offence to anger caused by finding his wife in a compromising situation with another man. He admits the offence and asks for forgiveness. He prays that the court be lenient with him during sentencing.
16. The victim's family stated that the death of their daughter devastated them. They say the accused was a polite person and they did expect him to hurt their daughter. The children have been under the care of their maternal grandparents since arrest of the accused. The deceased's parents are still bitter but they confirmed that reconciliation talks were ongoing geared towards bringing the two families together;



they are yet to decide on the fate of the offender but in the meantime, he should remain in jail as they continue to heal.

17. The accused's mother and brothers regretted the accused's actions and attributed to alcohol. They confirmed reconciliatory meetings were still ongoing between the two families. The area administrators and the village elders confirmed that the two families agreed to reconcile among themselves but are still yet to agree on what form of discipline the offender should receive; and that the victim's family wishes to heal first hence it is their request that the offender still remain in Jail.
18. The probation officer's view is that the home environment, remain uncondusive for re-integration of the accused person.

Mitigation

19. The defence counsel Mr. Mbeche representing the accused mitigated on his behalf and submitted that the accused is remorseful, he is a father of 2 as per the pre-sentence report. That although the report indicates that the mother of the victim is still of the view that the accused should remain in custody, it is their humble view that this court does consider a light sentence because the longer the accused stays in custody, his two sons who are of tender age needs mentoring by him as the surviving parent.
20. Counsel submitted that the accused is remorseful and they urge the court to consider and find that the accused is fit for a light sentence and proposed a non-custodial sentence even if it is directed that he keeps away from the mother in-law. He submitted that the longer the accused is kept away, will cause damage to the young children. He submitted that the accused has been in custody since 2018 and urged this court to consider the period the accused has served while in remand.
21. The prosecution counsel Ms. Omari, submitted that she has looked at the report and it is not favorable to the accused since the family of the deceased are still bitter and devastated with the death of their daughter and though there were reconciliatory talks to bring the families together, they were yet to decide the fate of the accused. She submitted that the home environment is also still hostile to the accused and prayed for custodial sentence.

Determination

22. Under section 205 of the [Penal Code](#), a person convicted of Manslaughter is liable to imprisonment for life. However, in view court of appeal decision in Malindi Court of Appeal Criminal Appeal No. 12 of 2021, Julius Kitsao Manyeso Versus Republic the court of appeal declared life imprisonment unconstitutional, this court has discretion to impose a lesser sentence depending on circumstances of each case.
23. I have considered the accused's mitigation through his Advocate; the accused is remorseful of the offence and through his family, he is engaging the victim's family on negotiations; I also take note of the fact that the accused is a first offender and he is a young man with a young family of two children left behind by the deceased. I also consider the fact that the victim's family are yet to heal from the loss of their loved one and home environment is still hostile for the accused; I have also considered circumstances surrounding the offence. In view of the above, I am inclined to impose lenient custodial sentence and impose 10 years imprisonment.

24. Final Orders:-

1. Accused sentenced to serve 10 years imprisonment.
2. Period served in remand from the date of arrest to computed in the sentence.



3. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 14TH DAY OF JUNE 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

Court Assistant: Karanja

Ms. Omari for state

Accused: Present

