



**Republic v Maritim (Criminal Case E038 of 2020)
[2024] KEHC 6831 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6831 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E038 OF 2020
PN GICHOHI, J
JUNE 11, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

FAITH CHEPKEMOI MARITIM ACCUSED

RULING

1. Faith Chepkemoi Maritim (hereafter referred to as the Accused) 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 the 21st day of November 2020 at Saosa Village in Kuresoi South Sub-County Nakuru District within Nakuru County murdered Vincent Kipkemoi alias Festus Maritim.
2. On 09/02/2021, she denied the charge but the matter never proceeded for hearing despite hearing dates being fixed. It was on 29/02/2022 that there was intimation that parties were to enter into a plea bargain. This was actualised on 19/03/2024 when the parties signed the same. Ultimately, the accused person pleaded “guilty” to the charge of Manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.
3. The particulars are that on the 21st day of November 2020 at Saosa village in Kuresoi South sub-county within Nakuru County, she unlawfully caused the death of Vincent Kipkemoi alias Festus Maritim.
4. The facts read to the accused person were that on 21/11/2020, Bernard Maritim (the accused’s husband) came back from work and found the accused person sleeping with their three-year-old son Vincent Kipkemoi alias Festus Maritim (deceased). The following morning, he noted that their son was still in bed and went to check on him. He found the deceased foaming from the mouth and was not breathing.
5. He alerted neighbours who came and escorted both the accused and their son to Olenguruone Police Station. The body was later taken to Olenguruone Hospital Mortuary where the post-mortem was



conducted on 25/11/2020 and a report prepared (P Exh. 1). The cause of death was spinal injury due to blunt force trauma to the neck.

6. Investigations were carried out and revealed that the accused person had hit the deceased with a stick. She was then charged with murder which was later reduced to manslaughter due to plea bargain agreement. She admitted charge and the facts. She was convicted accordingly.
7. Mr. Kihara for the Prosecution urged the Court to treat accused person as a first offender but to consider the circumstances of the offence and that the accused attacked her own child with a stick causing his death.
8. In mitigation, Ms Mugweru urged the Court to consider that the accused is a first offender, that the accused had given birth to F.K who is in Grade 1 and currently living with accused's mother; Kipchumba Maritim who passed away at the age of three (3) months, and the subject of this case being Vincent Kipkemoi alias Festus Maritim (deceased). Counsel also stated that the accused also gave birth to a fourth child. She is with him in custody.
9. Counsel further stated that the accused person has since reflected on the occurrence of this offence and its consequences, and is deeply remorseful. That she has reformed during the period she has spent in custody and has learnt to mind her temperament. That she is now in charge of a nursery with about twelve children in remand and prison section where she has learnt to relate with and to be friendly and kind to children.
10. Further, Counsel stated that the accused person wishes to take care of her three-year old child she is with in custody and the nine-year-old son. That for those reasons, the accused person seeks pardon and leniency by being accorded a five-year non- custodial sentence or less.
11. The pre- sentence report called for by this Court was duly filed on 18/04/2024. The Probation Officer, Ms Elizabeth Kwamboka, presented a further report dated 9th May 2024 to capture details that were not included in the earlier report.
12. The Probation Officer clarified that as at the time the accused got married to Bernard Maritim in 2016, she was already eight months pregnant and therefore gave birth to the child now aged 9 years and in Grade 1. That child is currently living with the accused's mother namely P.S.
13. The Probation Officer further clarified that accused and her husband allegedly bore another child (Kipchumba Maritim) who died at the age of three months and that the subject of this case (Vincent Kipkemoi alias Festus Maritim) would have been their third child.
14. It is also stated that the accused person was pregnant as at the time she committed this offence and placed in custody. While in prison, she gave birth to a fourth child now aged 3 years. That this child gets convulsions for which he is on medication and attends clinic at Nakuru Provincial General Hospital.
15. The Probation Officer further stated that while admitting the offence, the accused person alleged that the offence took place while she was disciplining the child by caning him with a tick and hit him on the head leading him to convulse and die on the spot.
16. That though the community and her family do not exhibit any hostility to accused and are willing to receive her, her husband who has since severed all relations with accused, has remarried and is a father of one. That he is still bitter about the loss of his son and is opposed to non- custodial sentence. He believes that the accused is responsible for the death of his two children and should therefore face the consequences and remain in prison as he can no longer trust her.



17. The Probation Officer concluded that the accused person attributes her actions to being overtaken by anger but had no intention of killing the child. In the circumstances, he states that the community is willing to receive the accused back and that the local administration has promised to give close supervision on her. For those reasons, the Probation Officer recommends a Probation Sentence for a period of three years.
18. This Court has considered the circumstances under which this offence was committed, that the accused person has pleaded guilty to the charge and that she is treated as a first offender. Her mitigation and the pre-sentence reports are also considered.
19. From the mitigation and the pre-sentence reports, it is clear that the accused has given birth to four children two of whom, including the subject of this case, have died. It is not clear how the other child died while aged three months but is noted that the deceased's husband blamed the accused for the death of his two children.
20. It is not stated what the subject herein, Vincent Kipkemoi alias Festus Maritim (deceased), had done to deserve the alleged discipline. Anger that leads a mother to attack her three-year-old child using a stick and hitting him on head and not any other part of the body, cannot be termed as intention to discipline a child. That act can only be described as extreme violence and cruelty to the child.
21. What followed is absurd and an indicator of her indifference towards the child already wounded. The natural instinct of a mother would have perhaps been to raise some kind alarm including screaming for help noting that the child she had hit was convulsing but did not do so.
22. The act of placing the body in bed till the following morning is further cruelty to the child even in death. She never reported it. It is her husband who noted it that morning. She cannot now say that she wishes to take care of the other two children. It is not sufficient that she is now in charge of a children nursery in prison. That is a role she is playing while in custody and under supervision so to speak.
23. The accused's husband has moved on and re-married but still bitter and suspicious of the accused person. That bitterness and resentment is understandable in the circumstances.
24. The child she is with in custody is said to be undergoing treatment for convulsions but there is no medical record to back that up. Be that as it may, this Court is fully conscious of the best interest of the two remaining children. The two-year period spent in custody are not sufficient for rehabilitation. There is nothing to demonstrate that the two surviving children, and who are still of tender age, would be safe with her out there even with an eye from the community. She would be the one physically living with the children and not the community. With the death of her two children at a very tender age of between three months and three years, the accused person cannot be trusted with these two remaining children.
25. This Court is satisfied that at the moment, the child now aged three years is safe with accused while in custody under prison supervision while the other child aged 9 years is safe under custody of his grandmother.
26. For those reasons and the circumstances herein, this Court differs with the pre-sentence proposal for a non- custodial sentence of three years' probation. It is this Court's view that custodial sentence is more appropriate.



27. Under Section 333 (2) of the *Criminal Procedure Code*, the period spent in custody awaiting trial should be taken into account as was held by the Court of Appeal in *Abamad Abolfathi Mohammed & another v Republic* [2018] eKLR thus: -

“The appellants have been in custody from the date of their arrest on 19th June 2012. By dint of section 333(2) of the *Criminal Procedure Code*, the court was obliged to take into account the period that they had spent in custody before they were sentenced. Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial court. With respect, there is no evidence that the court took into account the period already spent by the appellants in custody. “Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to section 333(s) of the *Criminal Procedure Code* was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person. We find that the first appellate court misdirected itself in that respect and should have directed the appellants’ sentence of imprisonment to run from the date of their arrest on 19th June 2012.”.

28. In concussion, this Court makes the following orders :-

1. The accused person be and is hereby sentenced to serve seven years (7) years imprisonment.
2. The period she has spent in custody since her arrest on 22/11/2020 be taken into account in computing this sentence.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 11TH DAY OF JUNE, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Accused person

Mr. Kihara for the State

Ms Mugweru for accused person

Ruto, Court Assistant

