



Republic v Kipkech alias Chepokopil (Criminal Case E011 of 2022) [2024] KEHC 6629 (KLR) (6 June 2024) (Sentence)

Neutral citation: [2024] KEHC 6629 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E011 OF 2022
RB NGETICH, J
JUNE 6, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

FRIDAH CHEROP KIPKECH ALIAS CHEPOKOPIL 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 15th day of May, 2022 at Ngingang' Location, Mondri Division in Tiaty West Sub-county within Baringo County in the Republic of Kenya murdered one Sammy Katilong.
2. When the charge was read over and explained to the appellant herein, he denied and the matter was set down for hearing. However, when the matter came up for mention on the 16th March 2023, the accused informed the court that she wished to apply for plea bargain and the matter was fixed for mention on 20th April, 2023. On the 8th November, 2023, Ms. Ratemo informed the court that they had received a formal request for plea bargain and were yet to consider the request.
3. The plea agreement was duly executed on the 12th March, 2024 where the charge was reduced to manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. Upon the charge being read over and explained to the accused, he pleaded guilty and was convicted on his own plea of guilty.

Brief Facts of the Case

4. Facts surrounding this case are that on the 15th day of May, 2022 at around 20.00 hours, the deceased herein Sammy Katilong who was the husband of the accused went home while drunk. On arrival, the two quickly began arguing with the deceased asking the accused to vacate the house as he suspected her



of having an affair with another man who according to him was in the house. The argument escalated into a fight. The deceased then took a knife which was in his waist and used it to stab the accused on the forehead. The accused started bleeding and snatched the knife from the deceased which she used to stab the deceased on his chest.

5. Neighbors who heard the commotion rushed to the house of the accused and the deceased in an effort to stop the fight. When they arrived, they found the deceased seated down while being held by the accused. The two were rushed to the Chemolingot hospital where the doctor started treating the deceased but he succumbed to the injuries. The accused then left the hospital after being treated.
6. The accused surrendered to Chemolingot Police Station and was transferred to Nginyang' police station and was first arraigned in court on the 16th of June, 2022 vide miscellaneous file for custodial orders for 7 days to complete investigations. The accused's statement under inquiry was recorded on the 14th of June, 2022 where she admitted to killing the deceased during a domestic fight.
7. Post mortem was conducted on the body of the deceased at Baringo County Referral hospital on the 14th day of June, 2022 by Dr. Wangari Wambugu who formed the opinion that the cause of death was due to acute chest injury due to sharp force trauma following assault. The police file was compiled and the accused charged with the offence of murder now reduced to manslaughter upon request for plea bargain. Upon the accused pleading guilty to the charge, the court called for presentence report to be filed before mitigation.

Pre-sentence Report

8. From presentence report, the accused is aged 32 years old, had formal education up to standard six where she dropped out due to teenage pregnancy in the year 2009. She did not return back to school due financial challenges. In the year 2010, she got married to Kases Mnono and were blessed with twin children. She left the marriage after 4 years due to domestic violence. In the year 2015, she started doing casual jobs within the community as well as selling alcoholic drinks while staying with the mother. In the year 2017, she got married to the deceased herein and they stayed together till May 2022 when the incident occurred.
9. The accused's mother who is very elderly stated that the accused committed the offence while under the influence of alcohol and she has been in remand for a period of one year nine months and during this period, her children have suffered with one turning to street at chemolingot Centre. The accused's mother prayed for her daughter to be granted non-custodial sentence so that she can continue taking care of her two children. She added that upon her release, she will stay with her sister at Marigat; however, the accused's sister who stays at Marigat opposed the idea of staying with the offender. The accused's mother undertook to assist in reintegration of the accused.
10. The victim's brother is opposed to the offender being granted non- custodial sentence. He stated that no one from the offender's family has gone to their homestead to seek reconciliation and in the absence of reconciliation, he is still bitter and they are likely to harm the accused if non-custodial sentence is imposed. He proposed custodial sentence for accused's safety.
11. The accused confirmed that no reconciliation had been done on ground that her father died and she lacked someone to facilitate the process of reconciliation.
12. The local administration noted that the offender is well known to him. This is the first time for her to commit the offence. He opposed the offender being granted community rehabilitation sentence on ground of animosity which has grown between the accused's and victim's family since no reconciliation



has been initiated. He attributed failure to do reconciliation to low economic power of accused's family; that they are not able compensate the victim's family.

13. From the report, both the accused and deceased were drunk at the time of the offence and the deceased suspected the accused of having an affair and the man involved being in the house.

Mitigation

14. Mr. Chepngoswa holding brief for the defence counsel Mr. Mwaita mitigated on his behalf. He stated that the accused is remorseful, she is aged 32 years and a first offender. Counsel submitted that the convict has 2 young children and she prayed for a non-custodial sentence so that she can take care of her children now that the father is deceased. Counsel submitted that the children are staying with their old maternal mother and that the death was not intentional but it was as a result of domestic quarrel and the accused was acting in self defence.
15. Counsel confirmed that there has been no reconciliation on ground that the accused's father who would have initiated reconciliation passed on. Counsel submitted that even though the probation report is not positive, the family suggest that the accused can stay with her sister in Marigat and the issue of her life being in danger will not arise. Counsel stated that the accused has been in custody for close to two years now.
16. The prosecution counsel Ms. Ratemo submitted that she has looked at the sentiments in the presentence report and what has been highlighted is the issue of reconciliation, however taking into consideration the circumstances of the offence whereby there was a fight between the accused and the deceased and the accused was also injured she leaves the issue of sentence to the court.

Determination

17. Under section 205 of the *Penal Code* a person convicted of Manslaughter is liable to imprisonment for life, however the court in Malindi Criminal Appeal No. 12 of 2021 between *Julius Kitsao Manyeso v Republic* declared life imprisonment unconstitutional.
18. I take note of the fact that both the accused and deceased were drunk at the time of the offence and the deceased suspected the accused of having an affair and the man involved being in the house. The accused was also injured in the process of the fight. I take note of the fact that accused is a first offender and she is a young mother of two children whose interests are at stake. I have also considered that the family of the accused and the family of the deceased are yet to reconcile. This has given rise to animosity between the accused's and deceased's family which in my view compromise the safety of the accused. The accused's mother proposed that accused stay in Marigat if released. However, the accused's sister is not ready to accommodate her. In view of the above, I am inclined to impose lenient custodial sentence of 10 years.

Final Orders:

1. Accused to serve 10 years imprisonment.
2. Sentence served in remand to be computed in the sentence.
3. Right of appeal 14 days.

RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 6TH DAY OF JUNE 2024.

RACHEL NGETICH



JUDGE

In the presence of:-

CA Elvis.

Ms.Ratemo for state

Accused present

No appearance for the accused.

