



**Republic v Cheponin (Criminal Case 86 of 2017)
[2023] KEHC 18555 (KLR) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18555 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 86 OF 2017
RB NGETICH, J
JUNE 15, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

WILSON CHELELGON CHEPONIN ACCUSED

RULING

1. The accused Wilson Chelego Cheponin was charged with the offence of murder contrary to section 203 as read with 204 of the *Penal Code*. Particulars are that on the June 24, 2017 at Moinonin area of Loruk in Baringo North subcounty within Baringo county, the accused murdered Richard Cheptirim Konga.
2. The charge and its full particulars were read to the accused on August 22, 2017. He pleaded not guilty. The case proceeded to full trial and on March 30, 2023, Honorable Justice H.K Chemitei delivered a judgment finding accused guilty of the murder of Richard Cheptirim Konga and convicted him for the offence of murder as stipulated in section 203 of the *Penal Code*.
3. Upon delivering judgment on March 30, 2023 Honourable Justice H.K Chemitei gave directions that sentencing in this matter to be undertaken by myself and after complying with the provisions of section 200 of the *Criminal Procedure Code*, I proceeded with calling for records of accused, mitigation and sentence.
4. On the April 26, 2023, I called for pre-sentence report which was filed on the May 22, 2023. The report indicates that the accused denies killing the deceased; that he suspects that Pokot cattle rustlers must have carried out the attack and he was framed up. He denies owning or knowing to operate a gun.
5. The victim’s family are opposed to non-custodial sentence to the accused stating that the accused’s family has never taken any steps towards initiating reconciliation process. The local administration too is opposed to a non-custodial sentence stating that the community is hostile towards the accused.



6. The probation officer recommends an alternative sentence to a non-custodial sentence owing to the opposition of the non-custodial sentence by the community and the local administration.
7. The accused person mitigated through his counsel on record Mr Mbeche on the May 23, 2023 and calls upon the court to draw attention to page 2 of the pre-sentence report, that although the family of deceased insist that the accused should not be granted a non-custodial sentence, they stress that no steps of reconciliation have been initiated, the deceased's family hints on expectation of compensation.
8. In response to the negative response by family of the victim in respect to request for noncustodial sentence, counsel submitted that the family of the victim expect compensation and urged this court to consider suspended sentence and give condition for accused to stay in Lobo where his second wife resides. He further submitted that the report indicate that the family of the accused have no history of criminality and urged court to impose a lenient sentence.
9. The penalty for the offence of murder is death as stipulated by section 204 of the *Penal Code*. However, in the case of *Francis Muruatetu & another v Republic* [2017] eKLR, the Supreme Court declared mandatory nature of death sentence unconstitutional for taking away discretion from judicial officer to decide on appropriate sentence depending on circumstances of each case.
10. I have considered the fact that accused is a first offender. I also take note of the fact that even though accused denied the offence, he is remorseful and pleads for leniency. From presentence report, the accused is a family man married to two wives and blessed with 5 children from his two wives. The report further states that the family of the accused has no criminality and neither has any records been availed.
11. I also take note of the fact that no efforts to reconcile the family of the deceased and family of the accused have been made. I have taken note of the weapon used to inflict fatal injury to the victim herein which is a gun, a dangerous weapon which in my view should attract harsh sentence.
12. In view of the fact that the community are opposed to accused being returned back to the community and there being no effort of reconciliation by the family of the accused, it is unsafe to impose a non-custodial sentence. The accused deserve a custodial sentence which will give him an opportunity to reform and also allow time for the family of accused and victim to initiate reconciliatory process. A custodial sentence will also serve to deter repeat of similar offence in the community.

Final Orders

1. Accused to serve 15 years imprisonment
2. Sentence served in remand to be reduced from sentence imposed.
3. Right of appeal 14 days.

RULING delivered, dated and signed Virtually at **Kabarnet**

This 15th Day of June 2023.

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RACHEL NGETICH

JUDGE

In the presence of:

Mr. Kemboi - Court Assistant.

Mr. Abwajo for state.



Accused – Present.

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