



**Republic v Koech (Criminal Case 13 of 2019) [2023] KEHC 20919 (KLR) (20 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20919 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE 13 OF 2019  
RB NGETICH, J  
JULY 20, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JANE JELAGAT KOECH ..... ACCUSED**

**RULING**

1. The accused Jane Jelagat Koech was charged with the offence of murder contrary to section 203 and 204 of the *Penal Code*. The particulars of the charge being that the accused on the night of 10<sup>th</sup> and 11<sup>th</sup> day of August, 2019 at Oterit village in Mogotio sub-county within Baringo County murdered Nicholas Kipkoech Kertich.
2. The charge and its full particulars were read over to the accused who denied the charge and the matter was set down for hearing. However, on the February 21, 2022 when the matter came up for mention before Honourable Justice W. Korir, the accused informed the court that he had requested the state for plea bargain. The plea bargain negotiations went on till the April 24, 2023 when the plea agreement was duly executed and the charge was eventually reduced to manslaughter following the agreement.
3. On April 24, 2023, the charge of Manslaughter and its full particulars were read over and explained to accused. He pleaded guilty to the charge of manslaughter as provided under section 202 as read with section 205 and was convicted on his own plea of guilty.

**Facts of The Offence**

4. The brief facts of the case is that on the night of 10<sup>th</sup> and August 11, 2019, the deceased who was the accused's husband arrived home at around 10p.m while drunk and after sometime, he was attacked by his wife using a piece of wood from a bed. In the morning of August 11, 2019, at around 6:00 a.m, the accused realized that the deceased was dead. She left and met Margaret Kimengich and told her that she had done something and she should not say anything.



5. At around 6:30 a.m, she went back to the house. While in the house, Dominic Lagat entered the house to inquire if the deceased was awake since they were to go for manual jobs with him but the accused told him that her husband was still asleep and she left Dominic standing within the compound. The accused proceeded to the home of Jacob Keitany who gave her Kshs 100 to buy food stuff at a nearby kiosk. Dominic went into the house of the deceased and saw the deceased lying on the ground, wrapped with a blanket. He tried to wake him up but realized that he was not breathing and he suspected that he was already dead. He also saw blood on the ground where the deceased was lying. He went to the home of Jacob Keitany and informed him of the incident and they both went to confirm the same; Jacob then informed Erick Kiprono who also went to the home. At the time, the accused had left.
6. A search was mounted for the accused while Jacob Keitany informed the area chief about the incident and the police were also informed and they visited the scene. They found the deceased lying down in a pool of blood and upon physical examination, they saw bruises in both hands and legs and also bleeding from left hand elbow. Investigations revealed signs of struggle at the scene; two broken beds were also at the scene and a piece of wood stained with blood suspected to be murder weapon was recovered.
7. The accused was arrested by Jacob Keitany while fleeing to Eldama Ravine and upon re-arrest, she was found wearing a blood-stained skirt which was recovered from her and kept as exhibit. Postmortem was conducted by Dr Arafa and the cause of death was established as due to dislocated neck with right lung haemothorax. Upon the facts being read over to the accused, she admitted the same to be true.
8. On April 24, 2023 the court ordered that a pre-sentence report be filed before mitigation and the report was filed on the June 2, 2023.

### **Pre-sentence Report**

9. From the report, the deceased's family are still bitter with the accused; their desire is for the court to impose a severe custodial sentence; the extended family are however of the opinion that though the accused committed a serious offence, she should be allowed to serve a non-custodial sentence for the sake of her children who are living alone and fending for themselves.
10. The community/local administration requests the court to sentence the offender to a non-custodial sentence for the sake of her children. The chief stated that they believe the offender has learnt a lesson while in custody; that her children are living alone with nobody to assist them save for an old grandmother who occasionally helps them. Further, the chief learnt from principal of one of the schools where accused's child study that the child has eye condition which has not been attended to.
11. The Probation Office states that in view of the above sentiments, 3 years' probation sentence is recommended in the interest of the children and the offender may be assisted in guidance and counselling, rehabilitation and re-integration back to the community, subject to the discretion of the court.

### **Mitigation**

12. The defence counsel Mr Kipkulei mitigated on behalf of the accused. He submitted that the accused is remorseful for the offence he committed and apologizes to the court and to the deceased's family. He submitted that the incident happened accidentally as the accused was acting in her self defence and that of her child; further that the accused is a young woman aged 38 years and prays to be given a chance to go and take care of her children who are languishing. She has been in custody since 2019 and urged this court to consider the period she has spent in custody. She prayed for a non-custodial sentence.



## Determination

13. Under section 205 of the [Penal Code](#) a person convicted of Manslaughter is liable to imprisonment for life. The court may however impose a lesser sentence depending on circumstances of each case.
14. Facts presented by the prosecution in this case show that on the material day, the deceased arrived home drunk and started a fight with the accused and in her self defence and the defence of the child, accused was holding, she inflicted injuries on the deceased which led to his death. Recovered at the scene were a pieces of wood stained with blood and suspected to be the murder weapon; a clear indication that the accused and the deceased had a fight; it is clear that the accused did not intend to kill the deceased but was defending herself and the child but unfortunately, the deceased died in the process. She apologized to the court and to the family of the deceased which is also her family.
15. I take note of the fact that the convict pleaded guilty to the lesser charge of manslaughter resulting in saving the court's time as one of the factors mitigating his sentence.
16. I also take note of the fact that the accused was a first offender. Through defence counsel, the accused informed the court that she is remorseful and regrets committing the offence; that she has been in prison since August 2019 which translates to close to four years now and is now a changed woman ready to be integrated to the society and to be a role model.
17. The Probation Officer urges this Honourable court to consider the interest of the children and sentence the accused to serve 3 years' probation sentence so that she can be assisted through guidance and counselling, be rehabilitated and re-integrated back to the community, subject to the discretion of the court.
18. The Court is enjoined to consider the blameworthiness of the accused in reaching the appropriate sentence. See [Ambani v R](#) [1989] KLR 161. Apart from mere retribution to punish the offender for criminal act in a just manner, other objectives of sentence include deterrence, rehabilitation, restorative justice, community protection and denunciation. See [Sentencing Policing Guidelines for Judiciary of Kenya](#).
19. In this case, I agree with the accused that the accused was provoked by the deceased who persistently assaulted her while under the influence of alcohol; unfortunately, in this incident while in self defence and defence of her child, the accused hit the deceased with a stick fatally injuring him. I consider the accused's blameworthiness to be diminished to the extent that it is the deceased who initiated the fight as confirmed by struggle evident in the house after the incident.
20. Alcohol driven violence resulting in death of the parties on slightest provocation is a primitive disposition which must be discouraged by deterrent sentence of the accused in the interest of both community protection and denunciation of the conduct.
21. In reaching an appropriate sentence in this matter, the Court must consider whether the objectives of sentencing cannot be met through a non-custodial sentence. In view of accused's diminished blameworthiness, the fact that accused has been in custody for a period of 4 years since her arrest on August 11, 2019 and in the interest of the children who have been left to fend for themselves, I am inclined to impose a non-custodial sentence.
22. Final Orders:
  1. Accused to serve 3 years' probation sentence.
  2. Right of Appeal 14 days.



**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET  
THIS 20TH DAY OF JULY 2023.**

.....

**RACHEL NGETICH  
JUDGE**

**In the presence of:**

**Mr. Kemboi - Court Assistant.**

**Ms Ratemo for state.**

**Mr. Kipkulei for accused.**

**Accused present.**

