



**Republic v Keitany (Criminal Case 15 of 2023)  
[2024] KEHC 12781 (KLR) (17 October 2024) (Sentence)**

Neutral citation: [2024] KEHC 12781 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDAMA RAVINE  
CRIMINAL CASE 15 OF 2023  
RB NGETICH, J  
OCTOBER 17, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SHADRACK KIPKEMOI KEITANY ALIAS KEMBOI ..... ACCUSED**

**SENTENCE**

1. The accused Shadrack Kipkemoi Keitany Alias Kemboi 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 on the 26th day of April, 2017 at Embogong in Mogotio Sub- County within Baringo County, the accused person unlawfully killed Solomon Kertich Kiplagat.
2. The accused denied the charge upon being read over to him and the trial process commenced. However, when the matter came up for hearing on the 20th of July, 2022, Mr. Kemboi Advocate for the accused informed the court that they had a discussion with the accused and they would want to pursue plea bargain. The matter was fixed for mention on the 3rd August, 2022 to confirm the position on plea bargain.
3. The plea agreement was duly executed on the 19th September, 2024 reducing the charge to manslaughter of manslaughter as provided for under section 202 as read with section 205 of the [Penal Code](#) and the charge and its particulars was read over and explained to the accused who pleaded guilty and was convicted on their own plea of guilty.

**Brief Facts Of The Case**

4. On the night of 26<sup>th</sup> day of April 2017 at about 11.00pm, Kimose area chief reported to police through a phone Call that an unknown person had been murdered and his body was lying on a feeder road within Embogong/Kimose near Emining-Marigat road. Police officers from Mogotio police station visited the scene and the members at the scene identified the deceased as Solomon Kertich Kiplagat the



deceased herein. On visiting the scene, the police saw skid marks at the feeder road leading to accused's home. They also saw stones that barricaded the road about 50 meters from the scene of murder towards the home of the deceased. The deceased lay facing up near his motor vehicle Toyota Fielder Reg no KCG xxxU which was packed in the middle of the feeder road with hazard lights on and the front door open, the rear right door was partially open. The deceased had injuries on his head and blood oozing from the mouth.

5. After searching the vehicle, the police found a blood-stained stone placed near the brakes and a yellow blood stained manilla rope tied to the driver's seat. A brown jacket, keys, copy of national identity card and a driving licence bearing the name of the deceased were found in the vehicle. The body of the deceased was taken to Eldama Ravine sub county mortuary and his car towed to Mogotio Police Station.
6. During investigations, it was established on 26<sup>th</sup> April 2017 at around 4 p.m, the accused had met the deceased's brother Joshua kuto Kiplagat and informed him that the deceased had conned him (accused Kshs. 500,000/= and that the deceased had totally refused to pay back the money.
7. On the same day at around 7 pm, one Peter Tallam said he was from Emining with two other people when while at the junction of the feeder road leading to deceased's home, they found the road had been barricaded with stones forcing them to slow down and that is when the accused emerged from the bush and Peter inquired from the accused why the road had been barricaded. The accused informed him that he was waiting for someone who had his money and that he had barricaded the road so as to force the person to stop. He proceeded to Kimose and on going back at around 9pm, he saw a motor vehicle on the feeder road with hazard and brake lights on. He moved closer and saw someone standing at the driver's side with the door open and when he moved closer, he saw the accused strangling the driver whom he identified as the deceased herein. He did not see anyone else and fearing for his life, he ran away.
8. According to Monica Yator Chemjor who is the wife to the accused, the accused went home at around 9.30pm on the same day and told her that he had killed someone. He then requested her to give him water to bath. She saw blood on his black trouser and his sweater colored green and black and a human bite on his right-hand palm. The following day the accused went into hiding.
9. Postmortem was conducted by Dr. Kamau in the presence of the relatives of the deceased and a police officer and he established that the deceased died of multiple injuries secondary to blunt force trauma consistent with assault.
10. After along search, the accused was traced to Kitale and was arrested on the 29th February 2022 at Kitale Sub-County Hospital and escorted to Mogotio Police Station on 1st of March, 2020. After interrogation, the accused claimed that the deceased had conned him money in the year 2016, which saw him lose his job as an accountant at Equity Bank which made him bitter and he resorted to revenge by killing the deceased.
11. The police file was compiled and the accused person charged with the offence of Murder now reduced to Manslaughter upon plea agreement being reached.

### **Mitigation**

12. The defence counsel Mr. Kemboi mitigated on behalf of accused. He stated that the crime before court was orchestrated by the sense of betrayal and serious financial loss caused by acts of the deceased who was the uncle to the accused. He stated that the deceased conned his client a total of Kshs.800,000/= through flimsy Gold deal which was never there. He stated that his client lost his job after the deal and



seriously suffered while the deceased began to thrive where he purchased a motor vehicle and a posho mill and opened a shop using the money he got from the accused.

13. Counsel submitted that the accused tried to get the money from the deceased but his attempts failed and he was forced into the offence. He stated that the accused is a family man who has a wife with three children. That it is unfortunate that his only son Timothy Kemboi died in the year 2020 and he was not able to attend his funeral. That if he was not in remand, he believes his son would not have passed on as he would have got proper medication. He stated that the accused has 9 siblings who relied on him before incarceration.
14. Counsel further submitted that the accused is educated holding a diploma in Business Administration from Kenya School of Monetary studies; that before his incarceration, the accused had a robust career of being a banker which he served from 2011 up until 2017 when he was conned by his uncle the deceased herein. He prayed that this court allows the accused to re-integrate back to the society and that he undertakes to contribute positively and will not repeat the offence; that he is a young man aged 38 years with only 2 children and he prays to be allowed to re-integrate to the society and contribute positively.
15. The prosecution Ms. Omari submitted that the victim herein was the offender's uncle from maternal side who was 33 years old and who left behind a wife and 3 children aged 14, 11 and 7 years now. That the children would have greatly benefit from the life of the father and the wife who is a teacher is now taking the responsibilities solely.
16. Counsel submitted that he also used to support his elderly parents and his children who are still in school and are forced to grow without the love of their father. She submits that even if the deceased had defrauded the accused, there could have been other ways of resolving the issue considering they were close relatives. She submits that custodial sentence would be appropriate in the circumstances.

### **Pre-sentence Report**

17. From presentence report filed following court's directions, the accused is 38 years old and is the only child born to his two biological parents. After his parents separated, his mother remarried, and he has 8 step-siblings from his mother's side. The accused was primarily raised by his maternal grandparents where he was allocated a portion of land to settle. He maintained good relationships with both his biological parents and his step-siblings.
18. The accused sat Kenya Certificate of Secondary Education examinations in 2005 which he obtained a mean grade of C+. He thereafter pursued a diploma in the field of banking and finance, at the Kenya School of Monetary Studies, graduating in 2011. After his graduation, he secured employment at Equity Bank, where he served in various locations: Mombasa from 2011 to 2013, Naivasha from 2013 to 2014, and finally in Kericho until 2017, when he resigned. The reason behind his resignation was a significant financial loss of Kshs 800,000/= which he claims occurred due to a fraudulent gold deal involving the deceased in this matter. He stated that the incident caused him immense stress, leading to his decision to resign.
19. That Prior to the events leading to the offence, the accused was a respected individual, well-regarded for his profession as a banker. His career trajectory appeared promising, and his personal life was stable. He is married with three children. Tragically, one of their children, who had cerebral palsy, passed away. Currently, his wife is staying with their two remaining children-one in Form One and the other in Grade four at her maiden home.



20. From the report, the accused's family life and career have been deeply affected by his incarceration at remand as since he was placed in remand on February 28, 2022, he has been unable to provide for his family, leaving his wife as the sole caretaker. His absence has caused significant emotional and financial strain on his family, particularly in supporting their children's education. He deeply longs for an opportunity to rejoin his family and resume his role, particularly in ensuring his children's academic progress.
21. The social inquiry into the accused's personal history reveals a resilient individual who, despite the challenges of not being raised directly by his parents, remained focused on his life goals and pursued them with determination. Despite the separation of his parents and the complexity of his family structure, the accused maintains close and positive relationships with both his parents, his uncles and his step-siblings. The accused desire to reunite with his family and support his children's education further highlights his commitment to his responsibilities as a father and husband.
22. The accused recounts that the deceased was his uncle. In 2016, he claims that his uncle approached him with a proposal to invest in a gold deal, where they would purchase gold and later sell it for a higher price. Trusting his uncle, the offender withdrew Ksh 800,000/= from his savings account, met with the deceased, handed over the money, and received a piece of gold in return. However, shortly after this transaction, he says he was arrested by police officers, who confiscated the gold and threatened to charge him with smuggling. Although he was eventually released, he lost both the gold and the money.
23. The accused later learned that his uncle was involved in a fraudulent operation with others, deceiving people in gold-related scams. Feeling betrayed, he confronted his uncle, demanding the return of his money. The offender further expressed frustration, noting that while he was struggling financially after the incident, his uncle appeared to be thriving-buying a car, acquiring a plot of land, opening a shop, and purchasing a posho mill.
24. The accused acknowledges his wrongdoing in relation to the incident that led to the tragic death of his uncle. He admits that his actions were driven by anger and frustration over being defrauded, but he expresses deep regret for allowing his emotions to escalate into violence. He is remorseful and recognizes the gravity of his actions, especially in causing the loss of life to someone who, like him, had a family and young child.
25. The accused is committed to making amends and taking responsibility for his actions. He has expressed support for his family's efforts in initiating a reconciliation process, appreciating the importance of restoring harmony within the family and the community. He also welcomes the plea bargain initiated by the ODPP, viewing it as an opportunity to face the consequences of his actions while seeking a resolution that considers both justice and reconciliation.
26. The victim's family stated that it had not been easy for them to cope since the death of their kin as the memories are still very fresh. That the children still ask their mother where their dad is as he was the bread winner in the family. They felt that the accused planned to kill by the deceased from how the incident occurred. This has impacted negatively in the family whereby the victim's parent lives in fear at their old age and would not even want to hear anything about the accused. The family also stated that they have no room for reconciliation and want the accused to be punished for his wrongdoing.
27. The victim's brother indicated that the accused had called him asking for a reconciliation. Upon him declining his request, he threatened that he will harm him when released thus creating more fear to the victim's family members.
28. The community have no issues with the accused as he was a resourceful person in the area before the act and hopes he would reform. The local administrator confirmed that the accused was of great help



to the community and helped many people. He further noted that there was no record of criminality in the family.

### **Determination**

29. 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 vs Republic](#) declared life imprisonment unconstitutional.
30. I have considered the circumstances surrounding the offence, the fact that accused is a first offender and sentiments by the victim's family, local administration and accused together with his family. From the presentence report, the victim's family are still bitter, the brother indicated that the accused threatened to harm him for declining reconciliation. I further note that the offence was committed in a very cruel manner. Despite the fact that the accused was pained by the loss of money through gold scam and eventually lost his job as a result of arrest, he had other lawful means of seeking redress. He did not need to take away the life of the deceased. From the facts given by prosecution and from presentence report, the act was premeditated, planned and he brutally po killed the deceased. In view of the fact that the family of victim are still bitter and no reconciliation has been reached and in view of the circumstances surrounding the offence, I am inclined to impose custodial sentence. Custodial sentence in my view will assist the accused learn how to manage his anger and also give room to the family of victim to heal. I am inclined to impose 10 years imprisonment.
31. Final Orders: -
  1. Accused to serve 10 years imprisonment.
  2. Period served in remand to be computed in the sentence.
  3. Right of appeal 14 days.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 17<sup>TH</sup> DAY OF OCTOBER 2024.**

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Elvis – Court Assistant.

Ms. Ratemo for State.

Mr. Kemboi for accused.

Accused present.

