



**Republic v Chepkwony (Criminal Case 6 of 2019)
[2024] KEHC 12444 (KLR) (16 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12444 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE 6 OF 2019
RL KORIR, J
OCTOBER 16, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

OBADIA KIPKIRUI CHEPKWONY ACCUSED

JUDGMENT

1. Obadia Kipkirui Chepkwony (Accused) was charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars were that on the 6th day of March 2019 at Silibwet Township within Bomet Cunty, murdered Mercy Chepkoech.
2. He took plea on 27th March 2019 and denied the charge. The trial faced many challenges including lack of witnesses and no meaningful progress was made for 3 years. When the matter came up for trial on 20th March 2023, and after the first witness testified, defence counsel informed the court that the Accused wished to plea bargain. The trial was adjourned to allow the Accused plea bargain with the State. When the matter came up for mention on 4th October 2023 the Accused informed the court that he had changed his mind and wished to proceed with the trial. Parties then took trial dates. However when the matter came up for trial on 8th April 2024, the Accused yet again changed his mind and stated that he wished to proceed with the plea negotiation.
3. Against the above background, the court made an extensive inquiry from the Accused to satisfy itself that he understood his trial rights and that his decision to enter into a plea agreement was voluntary. Upon so satisfying itself, the court accepted the Plea Agreement.
4. The Accused took plea on the substituted charge on 15th April 2024, and pleaded guilty to the lesser charge of manslaughter Contrary to Section 202 as read with Section 205 of the [Penal Code](#).



5. The facts as contained in the Plea Agreement were read by the Prosecution Counsel as follows:-

“The Deceased Mercy Chepkoech had a rented room at Silibwet market from where she operated a small business of selling potato chips. The deceased would spend different nights in room with the Accused Obadia Kipkurui and Gilbert Kibet Cheruiyot, both her lovers.

On the night of 6th March 2019, the Accused and the deceased were seen entering the house where they were heard quarrelling.

They were never seen again until 8th March 2019 when the hotel management decided to break the door to the room in order to book it for another customer.

To the consternation of the hotel caretaker, the rotting body of the deceased was discovered fully covered with a blanket on the bed. The Accused person was nowhere to be seen.

On 8th March 2019 the Accused admitted to his mother Alice Koskei that he had killed the deceased. His mother called the area Assistant Chief Joseah Kipnetich who advised her to keep vigil and report to him when the Accused resurfaces. On the 10th March 2019, the Accused’s father Samuel Koskei informed the Assistant Chief that the Accused had come home. The Accused was therefore escorted to the Assistant Chief’s office where he admitted the offence and was escorted to Bomet Police Station.

The deceased’s body was taken to Longisa County Referral Hospital where the cause of death was established to be respiratory failure secondary to strangulation.

From the circumstantial evidence, the accused was the last known person to be seen with the deceased. He has readily admitted to killing her.

The Prosecution accepts that:

-the deceased and the Accused were lovers and were together on the fateful night.-That while drunk, they had a romantic fallout which escalated into a fight leading to the demise of the deceased.-The Accused smothered the deceased in the heat of passion.-The assault was not premeditated.-The Accused accepts these facts and he may therefore be convicted for the offence of manslaughter”.

6. The Accused accepted the facts as true and was consequently convicted on his own guilty plea for the offence of manslaughter contrary to Section 202 as read with Section 205 of the [Criminal Procedure Code](#).
7. The court called for a pre-sentence report and scheduled a sentencing hearing.
8. At the sentencing hearing on 24th July 2024 defence counsel Ms Chemutai offered mitigation on behalf of the Accused. She submitted that the Accused was deeply remorseful for unintentionally causing the death of the deceased. That the Accused, was an unmarried young man. Counsel submitted that the Accused’s father had sought traditional reconciliation with the victim’s family and the process was yet to be concluded. She prayed for a non-custodial sentence as the Accused had been in pre-trial custody since 2019. Counsel further urged the court to consider the pre-sentence report which was favourable to the Accused.
9. The Accused addressed the court directly and prayed for a second chance and he stated that he undertook to obey the law.
10. On his point, the learned Prosecution Counsel Mr Njeru told the court that the Accused was a first offender. He submitted that the offence was serious and the sentence ought to be proportional and



deterrent. Counsel further submitted that the offence was aggravated because the Accused ran away after the incident instead of saving the live of the Accused. He urged for a custodial sentence.

11. In considering sentence, the court is required to take into account the objectives of sentencing as set out in the *Sentencing Policy Guidelines* 2023 as follows:-

Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other- in so far as possible, sentences imposed should be geared towards meeting the objectives in totality.

- i. Retribution.
 - ii. Deterrence.
 - iii. Rehabilitation.
 - iv. Restorative justice.
 - v. Community Protection.
 - vi. Denunciation.
 - vii. Reconciliation.
 - viii. Reintegration.
12. The court is also obligated to take into account any aggravating or mitigating factors as outlined by the Supreme Court in *Francis Karioko Muruatetu & another v Republic* (2017) eKLR thus:-

“In re-hearing sentence for the charge of murder, both aggravating and mitigating factors such as the following, will guide the court;

- (a). Age of the offender;
- (b). Being a first offender;
- (c). Whether the offender pleaded guilty;
- (d). Character and record of the offender;
- (e). Commission of the offence in response to gender-based violence;
- (f). The manner in which the offence was committed on the victim;
- (g). The physical and psychological effect of the offence on the victim’s family;
- (h). Remorsefulness of the offender;
- (i). The possibility of reform and social re-adaptation of the offender;
- (j). Any other factor that the court considers relevant.

Where the appellant has lodged an appeal against sentence alone, the appellate court will proceed to receive submissions on re-sentencing.

These guidelines will be followed by the High Court and the Court of Appeal in ongoing murder trials and appeals. They will also apply to sentences imposed under section 204 of the *Penal Code* before the decision in Muruatetu.”



13. In this case, the facts show that the Accused and the deceased were lovers who used to spend time together in the deceased's rental room at Silibwet trading centre. That they were last heard quarrelling in the room in which the deceased's body was found two days later. The post mortem showed that she died of manual strangulation. The Accused admitted to having killed her. It was a clear case of femicide.
14. The facts also show that there was an ongoing relationship between the deceased and another man named Gilbert Kibet Cheruiyot. There was however no suggestion that the heinous killing was caused by the love triangle. What clearly emerges from the facts is that the Accused strangled the deceased and left her on the bed covered and disappeared from the scene. This was an aggravating circumstance as he failed to raise an alarm which might have led to the deceased's life being saved.
15. I have considered the pre-sentence Probation Officer's report dated 23rd May 2024. The Probation Officer states that the Accused came from a dysfunctional family and was raised in the larger part of his life by his maternal grandmother. He dropped out of school for lack of interest in education due to lack of positive parental guidance. He subsequently engaged in casual jobs from which he financed his alcoholism.
16. With respect to the Victim Impact Statement, the report states that the deceased's family was still grieving their loss and prayed for justice. They acknowledged that they were open to traditional reconciliation if the Accused's family took the necessary steps.
17. The duty of the court is to balance the scales of justice. There is no doubt that the Accused was remorseful and that there were steps taken by his family towards reconciliation with the deceased's family according to their tradition. I have however taken into consideration the fact that the Accused lacked a proper supportive structure for non-custodial rehabilitation. It is my view that he would benefit more from a custodial rehabilitation.
18. I have taken into consideration that the Accused saved judicial time by plea bargaining and taking responsibility for this offence. I have also noted that he has been in pre-trial custody since his arraignment on 18th March 2019 a period of five and a half years, which I have taken into account in arriving at the final sentence in accordance with Section 333 (2) of the [*Criminal Procedure Code*](#).
19. The Accused shall serve 10 years' imprisonment from the date of this sentence.
20. Having plea bargained, the Accused has a right of appeal to the Court of Appeal against sentence only.

Orders accordingly.

JUDGEMENT DELIVERED, DATED AND SIGNED THIS 16TH DAY OF OCTOBER 2024.

R. LAGAT-KORIR

JUDGE

Judgement delivered in the presence of Mr. Waweru holding brief for Mr. Njeru for the State, Ms. Chemutai for the Accused and Siele (Court Assistant).

