



**Republic v Koskey (Criminal Case E003 of 2024)
[2024] KEHC 12195 (KLR) (11 October 2024) (Sentence)**

Neutral citation: [2024] KEHC 12195 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E003 OF 2024
SM MOHOCHI, J
OCTOBER 11, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

MERCY CHEPKURUI KOSKEY ACCUSED

SENTENCE

1. Mercy Chepkurui Koskey, the accused arraigned before Court on the 10th January 2024, and charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars are that; the Accused on the 22nd December 2023 at Salгаа Center within Rongai Sub-County of Nakuru County Murdered Mary Nduta Wanyoro.
2. On the 10th July 2024, this Court found guilty and convicted the accused on a lesser charge of manslaughter reserving this sentence to await, pre-sentencing report by the Probation department and the victim impact statement as well as mitigation by the accused.

Analysis and Determination.

3. It is the duty of this Court to impose a sentence that meets the facts and circumstances of the case; this Court has considered the full circumstances of the offence which is contained in the Facts:

“That on the night of 21st and 22nd December, 2023, the accused herein, Mercy Chepkurui Koskey, was drinking beer together with the deceased, Mary Nduta Wanyoro at Club 42 bar within Salгаа Trading Centre in Rongai Sub-County within Nakuru County.

At around 3:00 am, while the deceased was standing at the entrance to the bar, the accused accidentally stepped on the deceased’s foot for which she apologized immediately. A few minutes later, the deceased went to where the accused was and slapped her prompting the



accused to stand up and a fight ensued. They were then separated by customers who were in the premises. The accused was advised to leave and go home.

The accused indeed left and went to her house within Salga Centre where she picked a kitchen knife, hid it in her underpants and went back to the bar. She proceeded directly to where the deceased was seated and they engaged in conversation together with another lady customer. She then gave the lady customer Kshs. 200/= to go to the counter to buy some beer. When the lady was about to hand over the money, the accused called out to the bar attendant telling her not to give the lady any beer. Before the attendant could respond, the accused took out the knife, stabbed the deceased on the right side of the neck and ran away. The deceased fell to the ground from her seat as other customers ran out of the bar screaming. Henry Burachi Kalikasa offered to assist the deceased and with others, he took her to Emmanuel clinic where she passed away on arrival.

The matter was reported at Salga Police Station and the officers therein responded to the scene and recovered the knife used to kill the deceased as well as CCTV footage of the crime scene and commission of the offence which was processed by crime scene personnel. The deceased was arrested at the home of Andrew Koros, the Nyumba Kumi Chairman, Boror Location.

The body of the deceased was escorted to PGH Annex Hospital where a post mortem was conducted by Dr. Titus Ngulungu who opined that the cause of death was due to massive blood loss following severed right neck vessel due to a single stab wound to the right side of the neck.

The accused was subjected to mental assessment and was found fit to stand trial and was charged with the offence of murder.

The following exhibits were produced in support of the charge;

1. Knife
2. Post Mortem Form.
4. Mercy Chepkurui Koskey, expresses regret and remorse for her action, saying that she attributes her offence to anger issues out of provocation from the deceased after fighting over a customer of the trade. She however regrets her actions and takes full responsibility of them. Both families have met and initiated the reconciliation process with an aim of reaching out full reconciliation in due course.
5. The *Sentencing Policy Guidelines* (2023) informs sentencing in Kenya to achieve proportionality, Equality, Uniformity, Parity, Consistency, Impartiality, Accountability/Transparency and Inclusiveness.
6. Sentencing is a discretion of the trial Court. In *Bernard Kimani Gacheru –Vs- Republic* (2002) eKLR, the Court of Appeal stated that:-

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial Court. Similarly, sentence must depend on the facts of each case. On appeal the appellate Court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial Court overlooked some material factor or took into account some wrong material, or acted on a wrong principle. Even if, the appellate Court feels that the sentence is heavy and that the appellate Court might itself not have passed that sentence, these alone are not



sufficient grounds for interfering with the discretion of the trial Court on sentence unless, anyone of the matters already stated is shown to exist.”

7. This Court is alive to the prime objectives of the criminal law, which is imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done and that there is no straightjacket formula for sentencing an accused on proof of crime.
8. The principle of proportionality is grounded within the concept of just deserts and is embraced by common law. In Hoare v The Queen (1989) 167 CLR 348), it was stated that:

“ A basic principle in sentencing law is that a sentence of imprisonment imposed by the Court should never exceed that which can be justified as appropriate or proportionate to the gravity of the crime considered in light of its objective circumstances”.
9. What sentence would meet the ends of justice? depends on the peculiar facts and circumstances of each case and the Court must keep the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances close in mind. (See Charles Ndirangu Kibue v Republic [2016] eKLR). Further, the Court ought to bear in mind the obligation imposed on it by the Judiciary Sentencing Policy Guidelines to consider the aggravating and mitigating circumstances and their effects on the sentence in determining the most suitable sentence.
10. The applicable law on sentence for the offence of manslaughter is found under the provisions of Section 205 of the Penal Code which reads as follows;

‘Any person who commits the felony of manslaughter is liable to imprisonment for life.’
11. The section provides for the maximum sentence, that is life imprisonment and this Court has taken into consideration the aggravating circumstances in that, the convict used a deadly weapon namely knife in committing the offence; the facts reveal that the killing was not premeditated; the accused in a moment of uncontrolled anger having lost out in a scuffle with the deceased went to her house armed herself with a knife and returned to fatally stab the deceased to death.
12. The mitigating factors taken into consideration by this Court are that the accused are the personal circumstances of the accused that she has also expressed her remorse and is deemed to be a first offender; she has two children one aged two years old and another aged six years old.
13. The accused is 23 years with a two-year-old child whose father has equally abdicated from his parental responsibilities. She readily takes responsibility of her actions and pleads for leniency before Court. Reconciliation has been achieved and offender gladly accepted by both family and his community at large. Based on the nature of the offense and Mercy Chepkurui Koskey’s lack of prior criminal history, the risk of re- offending is considered low. The offense appears to be an isolated incident. She demonstrates a strong potential for rehabilitation. Her family’s support and forgiveness play a significant role in her rehabilitation prospects.
14. The Court is of the view that the fact that she went back to her house to collect the knife and returned to stab the deceased manifest the malice aforethought and guilt intend to harm the deceased a custodial and non-custodial sentence shall offer the convict an opportunity to undertake reforms as well as take care of her two toddlers and that the convict should be given a chance to serve a one year custodial and a three-year non-custodial sentence. I noted that the convict indicated to the Probation Officer that she will be willing to serve a two-year imprisonment and a three-year Probation term.



15. In the circumstances, I will sentence the convict to a four (4) years sentence of Imprisonment of one (1) year and probation term of three (3) years from the date of completion of the imprisonment sentence.
16. The Period of imprisonment shall run from 23rd December 2023 and that she shall be eligible to benefit from the Prison remission program.
17. During the probation period, she shall be under the Supervision of a Probation Officer Nakuru County. She is cautioned to adhere to the following terms:
 - i. Mercy Chepkurui Koskey, should observe the following while serving the Probation sentence;
 - a. She is warned that a Probation sentence is not an acquittal, or discharge, but a legitimate punishment and therefore, she should be careful to diligently serve the sentence as required by the Court and probation officer.
 - b. She will obey the Probation Officer supervising her and adhere to all the conditions or terms set as part of that supervision.
 - c. She should be of good behavior and not commit any penal offence during the pendency of her sentence.
 - ii. Mercy Chepkurui Koskey, is warned that failure to abide by Any of the terms under 1) above will result in her arrest and committal to an imprisonment term.

It is so Ordered

SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM ON THIS 11TH OCTOBER 2024

MOHOCHI S.M

JUDGE

Quorum

Schola CA

Mr. Matoke H Advocate for the Accused

Ms. M Mburu Snr. Prosecution Counsel

