



**Republic v Malel & 2 others (Criminal Case E016 of 2023)
[2024] KEHC 12233 (KLR) (11 October 2024) (Sentence)**

Neutral citation: [2024] KEHC 12233 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E016 OF 2023
SM MOHOCHI, J
OCTOBER 11, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JUDY CHERONO MALEL 1ST ACCUSED

MERCY CHEPKEMOI NG'ETICH 2ND ACCUSED

MERCY CHEBET YEGON 3RD ACCUSED

SENTENCE

1. Judy Cheronno Malel, Mercy Chepkemoi Ng'etich and Mercy Chebet Yegon the accused were arraigned before Court on the 24th March 2023, 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's jointly on the 7th March 2023 in Kiptororo location Kuresoi North Sub-County of Nakuru County Murdered Alfred Akusoma.
2. On the 11th March 2024, this Court found guilty and convicted the accused on a lesser charge of manslaughter upon plea bargain and the Court 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:

“On the night of 7th day March, 2023, the 1st accused Judy Cheronno Malel went to her home with the 2nd accused Mercy Chepkemoi Ngetich after spending the evening together. At about 3:00 am, the deceased Alfred Akusoma went to the house of the 1st accused and broke



a window which he used to access the house. He was armed with a panga. The deceased stepped on the 2nd accused Mercy Chepkemoi Ngetich who was sleeping on a chair, it was then that the 2nd accused started screaming that there was a thief in the house. The 1st accused immediately woke up and together with the 2nd accused they started beating the deceased.

An immediate neighbor Winnie Chepngetich responded to the screams and went to the house of the 1st accused and she requested them to stop beating the deceased but the two continued and were later joined by the 3rd accused. They were using pieces of wood off-cuts and stones to beat the deceased all over his body.

The 1st, 2nd and 3rd accused persons then proceeded to report the matter at Kuresol Police station but by the time the police responded to the scene, the deceased had already succumbed to his injuries. The scene was processed and the body of the deceased was moved to the mortuary.

On 13th March, 2023 a post-mortem was conducted on the body of the deceased and the pathologist Dr. Henry Koros opined that the cause of death was massive hemorrhage due to severe brain injury.”

4. Judy Cheron Malel, Mercy Chepkemoi Ng’etich and Mercy Chebet Yegon the accused’s expresses regret and remorse for their action, saying that they took action in their own hands instead of seeking assistance from the authorities, they were acting in self defence, they are first time offenders.
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, Judy Cherono Malel, Mercy Chepkemoi Ng’etich and Mercy Chebet Yegon the accused’s used a stone and pieces of offcut logs in committing the offence; the facts reveal that the killing was not premeditated; the accused in a moment of self defence fatally attacked and injured the deceased.
12. It is noteworthy that Judy Cherono Malel, and Mercy Chepkemoi Ng’etich had been from a bar and thus one would conclude that they were inebriated at the time of committing the offence.
13. The Court is of the view that the fact that the mitigating circumstances herein, that the deceased broke into Judy Cherono Malel house at 3.am while armed and the 1st and 2nd Accused Mercy Chepkemoi Ng’etich reacted in self defence and were joined by a neighbor 3rd Accused - Mercy Chebet Yegon inflicting upon the deceased fatal injuries. I equally consider that the accused opted to plead guilty on plea bargain thereby saving this Court scarce judicial time.
14. It should be recalled that the deceased had pursued the accused persons from a bar where the 1st and the 2nd Accused persons had been drinking.
15. The 1st Accused is twenty-four (24) years old, with two toddlers aged five (5) and two (2) years old respectively, she is a first-time offender. The two-year-old is currently remanded in Nakuru Prison with the mother.
16. The 2nd Accused is thirty-six (36) years old, with one toddler aged five (5) years, she is a first-time offender.
17. The 3rd Accused is thirty (30) years old, with four children aged eleven (11), nine (9) years, five (5) years and four (4) years whose care and protection remains uncertain as her family is without resources to support them.
18. In the circumstances, and in the best interests of the children, I will sentence all accused to probation term of three (3) years from the date of this judgment.
19. During the probation period, Judy Cherono Malel, Mercy Chepkemoi Ng’etich and Mercy Chebet Yegon shall be under the Supervision of a Probation Officer Nakuru County. They are cautioned to adhere to the following terms:
 - i. Judy Cherono Malel, Mercy Chepkemoi Ng’etich and Mercy Chebet Yegon, should observe the following while serving the Probation sentence;



- a. They are warned that, a Probation Sentence is not an acquittal, or discharge, but a legitimate punishment and therefore, they should be careful to diligently serve the sentence as required by the Court and Probation Officer.
 - b. They will obey the Probation Officer supervising her and adhere to all the conditions or terms set as part of that supervision.
 - c. They should be of good behavior and not commit any penal offence during the pendency of her sentence.
- ii. Judy Cheronu Malel, Mercy Chepkemoi Ng'etich and Mercy Chebet Yegon, are warned that failure to abide by ANY of the terms under 1) above will result in their 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

Ms Schola CA

Mr. Opondo Advocate for the Accused

Ms. M Mburu Snr. Prosecution Counsel

