



**Republic v Cherono (Criminal Case E017 of 2023)
[2024] KEHC 14430 (KLR) (20 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14430 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE E017 OF 2023
RL KORIR, J
NOVEMBER 20, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

FAITH CHERONO ACCUSED

JUDGMENT

Judgement and Ruling on Sentence Upon Plea Agreement.

1. The Accused, Faith Cherono (Accused) was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence were that on July 26, 2023 at Mogoma Village, Kembu Location within Bomet East Sub-County she murdered E K who was her child aged 13 years.
2. The Accused took plea on 20th September 2023 and denied the charge.
3. On 22nd May 2024 during the pendency of the trial, the Accused informed this court that she wished to plea bargain with the State. The Plea Bargaining Agreement was filed on July 24, 2024 and it indicated that the Accused had agreed to plead guilty to the lesser offence of manslaughter.
4. On July 25, 2024, this court accepted the Plea Agreement after interviewing the Accused and satisfying itself that she executed the Plea Agreement voluntarily and that she understood her trial rights.
5. On the same day (July 25, 2024), the Accused took plea for the offence of manslaughter. The charge and every element thereof was read and explained to her in the Kipsigis language which she understood and she pleaded guilty. The court entered a plea of guilty for the offence of manslaughter.



6. The facts as read by the Prosecutor and captured in the Plea Agreement are as follows:-

“On the 26th day of July 2023 at Mogoma Village, Kembu Location within Bomet County, the deceased one E K, a minor aged 12 years stole maize from a neighbor’s farm and fed on them. The Accused person is the mother of the deceased and when she found out what the deceased had done, she descended on him with a piece of firewood hitting him several times on the head, arms and legs. As a result of the injuries, the deceased’s condition deteriorated and he developed breathing problems.

The Accused person rushed the deceased to hospital but unfortunately the deceased succumbed to his injuries and died. A Post Mortem was conducted and the cause of death was established to be bleeding in the brain secondary to a serious head injury.

It is admitted that the Accused person had no intention to kill the deceased and acted out of a fit of anger. This was essentially discipline gone wrong.”

7. The Accused accepted the facts as true and was convicted her on her own guilty plea for the lesser offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*.
8. A pre-sentence probation report dated August 18, 2024 was filed following the court’s directions. The report stated that the Accused took responsibility for her actions and regretted her actions. According to the report, the Accused asked this court for leniency and a non-custodial sentence so that she could get an opportunity to make amends to her family.
9. The Probation Officer recommended that the Accused was suitable for community based rehabilitation through Probation for a period of three years.
10. The deceased was the Accused’s son. The report stated deceased’s maternal grandmother was the most affected by the death and could not bear the loss as she was the one who brought up the deceased. That the grandmother asked this court to release the Accused on a non-custodial sentence so that she could take care of her other children.

Accused’s Mitigation

11. Mitigation by the Accused was made on her behalf by her counsel, Mr. Leteipa. Counsel submitted that the Accused relied on the pre-sentence report which painted her as a remorseful mother and further that her mother had forgiven her.
12. It was counsel’s submission that the Accused was a mother of two minor children and the rights of the children were at stake. Counsel urged the court to consider the rights of the Accused’s children when sentencing her. He prayed for a non-custodial sentence.

Submissions by the State

13. Mr. Njeru, the learned Prosecution Counsel submitted that the pre-sentence report was positive. That the Accused could be sentenced to Probation. He submitted that the circumstances of the offence was an act of discipline gone awry. While acknowledging that sentencing was at the discretion of the court, Counsel submitted that the State was not opposed to a non-custodial sentence as the Accused was a first offender
14. Sentencing serves multiple purposes as enumerated in the *Sentencing Policy Guidelines 2023* which outline the objectives of sentencing at paragraph 1.3.1 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.

15. The penal section for the offence of manslaughter is contained in section 205 of the Penal Code which provides:-

Any person who commits the felony of manslaughter is liable to imprisonment for life.

16. I have considered the circumstances of the case as stated by the learned prosecution counsel and as captured in the probation officer's report. The Accused beat up her 13 year old son by stepping on his stomach and beating him with sticks on the allegation that he had stolen two maize cobs from their neighbour. The deceased suffered a fatal injury as a result of the beating.
17. I have also considered the personal circumstances of the offender. The Accused aged 27 and a mother of 3 was raised in a family where domestic violence was practiced. She fell to teenage pregnancy and dropped out of school in class 7. She got 2 children (the victim and his sister one I C). She got into a marriage arrangement by eloping with one Emmanuel Mibei leaving the two children back at her home under the care of her parents. That the two children later joined her and became the source of much conflict with the husband who was said to have alienated them while he acknowledged only the 3rd born then aged one year and who was his biological child.
18. The probation officer observed that the Accused had become violent and when her brother-in-law who was also her neighbour complained that her children had stolen maize from his farm, she descended on them beating them with a stick and blows and crushed the son on the stomach causing him fatal injuries
19. The social inquiry report paints a picture of a mother who took out her life's frustrations on an innocent child. The assault was beastly and was not proportional to whatever indiscretion the child had committed. It was a clear case of transferred malice. She turned beast instead of protector of her child.
20. I have also considered the pre-sentence report and the Accused's mitigation that she was remorseful and regretted the assault incident that led to the loss of her child. I have also noted that this tragedy befell the same family and that her family had forgiven her. The Accused's family and advocate all asked this court to grant the Accused a non-custodial sentence.
21. The [*Sentencing Policy Guidelines 2023*](#) at paragraph 2.3.15 lists the factors that a court should consider when deciding to impose a custodial or non-custodial sentence. They are as follows:-



- i. Gravity of the offence: In the absence of aggravating circumstances, or any other circumstance that renders a non-custodial sentence unsuitable, a sentence of imprisonment should be avoided with respect to sentences that have been adjudged as deserving less than three (3) years.
 - ii. Criminal history of the offender: Taking into account the seriousness of the offence, first offenders should be considered for non-custodial sentences except where the seriousness of the offence crosses the custody threshold (where the offence is so serious that neither a fine or community sentence can be justified).
 - iii. Children in conflict with the law: Generally speaking, non-custodial orders should be imposed as a matter of course in the case of children in conflict with the law. The exception to this is in circumstances where in light of the seriousness of the offence, coupled with other factors, the court is satisfied that a custodial order is the most appropriate and would be in the child's best interest. Custodial orders should only be meted out as a measure of last resort and in accordance with the guidance provided under section 239 of the *Children's Act, 2022*. The court shall also issue post-committal supervision orders upon completion of the committal orders or the attainment of the age of majority where it is appropriate to so do in light of the nature of the offence and circumstances of the offender.
 - iv. Conduct of the offender: Non-custodial sentences are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
 - v. Protection of the community: Where there is evidence that the offender is likely to pose a threat to the community, a custodial sentence may be more appropriate. The probation officer's reports should inform the court of the risk posed by the offender to the community in order to inform sentencing.
 - vi. Offender's responsibility to third parties: Where committing an offender to a custodial sentence is likely to unduly prejudice others, particularly vulnerable persons who depend on them, a court should consider if, in light of the nature and seriousness of the offence, the objectives of sentencing can be met with a non-custodial sentence. The court should enquire into the offender's personal circumstances and, where appropriate, seek the assistance of a pre-sentence report.
22. I have no doubt that the Accused was remorseful. She has expressed remorse. She must have reflected on her life while in custody. Besides, the loss of her child must have occasioned her pain and psychological trauma which also serves as punishment for her indiscretion.
23. I have also considered that the Accused had one child aged 7 back at home and one child aged 1 ½ years who is accompanying her in prison. As submitted by defence counsel, these children were vulnerable and needed the presence of their mother. The Accused's parents also wish to be relieved of the burden of caring for the Accused's children and have prayed for a non-custodial sentence for the Accused whom they have also forgiven.
24. In the final analysis, having considered the circumstances of the case, the Accused's Mitigation, the Pre-Sentence Report, the Victim Impact Statement, I find that the Accused's merits a non-custodial sentence.
25. The Accused shall serve 3 years' probation.
Orders accordingly.

JUDGEMENT DELIVERED, DATED AND SIGNED THIS 20TH DAY OF NOVEMBER, 2024.



R. LAGAT-KORIR

JUDGE

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

