



**Republic v Chelangat (Criminal Case 39 of 2023)
[2024] KEHC 14490 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14490 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 39 OF 2023
RB NGETICH, J
NOVEMBER 14, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

NANCY CHELANGAT ACCUSED

RULING

1. The accused Nancy Chelangat 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 the accused person on the 29th day of June,2020 at about 2200Hrs at Poror Village, Poror Sub-location in Koibatek Sub-County within Baringo County murdered one Erick Kipchumba Chepkieng.
2. The accused denied the charge upon being read to him and the trial process commenced. On the 24th February,2022 when the matter was mentioned in court before Honourable Justice Weldon Korir, the defence counsel Mr. Mwaita informed the court that they had written a letter to the prosecution requesting to explore plea bargain. The matter was fixed for mention on the 24th March,2022 for progress report on the plea bargain.
3. On 16th July,2024 the prosecution counsel Ms. Omari informed the court that she had received information from the victims that parties had reconciled and compensation done. She prayed that a mention date be given and the pre-sentence report to be filed. The court called for presentence report and set the plea for 17th September, 2024. On the 17th October,2024, the charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code was read over and explained to the accused person. He pleaded guilty and was convicted on their own plea of guilty.



Brief Facts Of The Case

4. Facts surrounding this case are that on 29th June,2020 at about 10P.M, there was a loud scream emanating from Poror Centre by Miriam Saina. Neighbours and other villagers responded to the screams and headed to Miriam's house in Poror centre. The accused and her husband Abraham Kiptanui Chepkieng were sited outside the door of the distressed lady and on seeing the villagers, the accused and her husband jumped over the fence. The accused was holding a knife and her husband was holding a walking stick. The villagers tried to inquire what was happening but the accused who appeared very furious told them not to ask questions and many people were streaming into the homestead of Miriam Saina among them deceased Erick Kipchumba Chepkieng. Abraham (accused's husband) begun walking to his house which was not far and the accused followed at a distance and the other people followed as well.
5. There was a little confrontation between the deceased Erick Kipchumba Chepkieng and the accused stabbed the deceased with the knife she was carrying on the lower part of the chest before making a quick escape from the scene. The deceased fell to the ground and cried in pain as a lot of blood was oozing from his chest. The deceased was rushed to Mercy Mission Hospital where he was treated and referred to Nakuru PGH. On 30th June,2020, the accused was cited at Poror Centre and police from Eldama Ravine were notified. They rushed to the place and arrested the accused. On 1st July,2020 at 0430Hours, the victim succumbed to the injuries while undergoing treatment at Nakuru PGH.
6. On the 7th July,2020, postmortem was conducted on the body of the deceased by Dr. Ngulungu in the presence of the police and relatives. The doctor formed an opinion that the cause of the death was a chest injury specifically to diaphragm with stomach cut and massive blood loss secondary to a sharp force trauma to the left lower chest.
7. The police file was compiled and the accused charged with the offence of murder now reduced to manslaughter upon request for plea bargain.

Mitigation

8. The defence counsel Mr. Mwaita mitigated on behalf of the accused. He stated that the accused is remorseful and that she did not intend to kill the deceased and thus seeks this court's leniency. Further that she acted in self defence because the deceased had on several occasions started showing sexual advances towards her;and on this material night after being left behind by her husband who had gone home, the deceased took advantage of darkness, got hold of her and told her she must cooperate and fulfill his desire; that led to confrontation and as she tried to free herself from the deceased, the deceased who was holding a panga was too strong and used the panga to cut the accused on the head. At that point, the accused picked a knife from her hotel which was nearby and used it to stab the deceased. The deceased succumbed to the injuries.
9. Counsel submits that the convict is 38 years old and has 4 children the first born being in form 4, the second dropped out of school while she was in custody after getting pregnant and she is currently at home nursing a child. The 3rd born is 14 years old boy in class 7 and the last born is staying with the grandmother.
10. Counsel further submitted that while in custody, the accused's husband passed on and the convict is the only surviving parent. He urged this court to consider the period the accused has been in custody from 30th June,2020 to date and the presentence report which is positive for non-custodial sentence.



11. Counsel submitted that the family of the deceased are not opposed to non-custodial sentence as they have done reconciliation as per Tugen and Kipsigis culture. The family of the deceased was paid Kshs.80,000/= as consolation for the loss of deceased. Counsel prayed for noncustodial sentence so that the accused can have a chance to take care of the children who are now alone after the death of their father.

Response By State

12. The prosecution counsel Ms. Omari submitted that she had taken note of the fact that the family of the accused and deceased reconciled and were compensated and are not opposed to non-custodial sentence. She left the aspect of sentence to the discretion of the court.

Pre-sentence Report

13. From the report, the accused is 38 years old. She dropped out of school in class 4 and was employed as house help and at the age of 14 years, she got pregnant and gave birth to her first-born child. She was forced to get married to Joseph Rotich who was her father's agemate and after 5 years, she got her second child with Joseph but the mother-in-law wanted her out of her marriage. The offender's father got the message that she was being mistreated and he went for her. Her parents took care of her two children as she left to Nairobi in search of employment. She worked in Nairobi for one year then returned back home. She got employment at Fontana where she worked for one year. She got married to a second husband Abraham Kiptanui and were blessed with two more children.
14. The accused admitted the charge and restated circumstances of the offence as set out above. She admits her action that led to the tragic death of her brother-in-law and stated that her actions were driven by anger and provocation after a failed sexual demand from the deceased. She expresses deep regret for allowing her emotions to overcome her leading to the death of her brother in-law. She is remorseful and recognizes the gravity of her actions, especially in causing the loss of a family member. She supports reconciliation on ground that it will bring harmony within the family and the community.
15. The victim's family are not opposed to a non-custodial sentence as long as the accused keeps off the area as they fear she might do something else to the family. The victim's brothers stated that the matter was still very fresh in their minds and releasing her could provoke their emotions resulting to revenge. The victim's nuclear family is still very bitter with the accused for having killed their bread winner who left them in an awkward situation with one of his children still in school. The victim's aunts who are taking care of the offender's children noted that the children had not gone through the trauma neither had they sought counselling services for them due to the heavy responsibility accorded to them and urged the court to be lenient while sentencing the accused but were quick to point out that the offender should not step into the family's home for fear of revenge.
16. From the report, the accused has no record of criminality in the area and is well known to be a high esteemed person who made progress and took care of the extended family. Members of the community indicated that she has good community ties and regarded by everyone as a resourceful person.
17. The local administrator indicated that the offender is a well-known person in the area and as a hotelier she related well with the community and stated that she is able to abide by law if given a non-custodial sentence so as to take care of her children now being taken care of by various people as the husband passed on while she was in custody. The administrator confirmed that he was involved in the three reconciliation meetings with the two families where the offender's family were asked to compensate the victim's family with three cows which they did as agreed and forgave each other.



18. The social inquiry revealed that the accused is a person of high integrity and honest to self and people. Those who were interviewed painted a picture of a trustworthy person who was very resourceful and dependable in the community. She had good community ties and related well with everyone. They indicated that prior to the offence, she was taking care of her elderly mother-in-law before she passed on and was trusted with the family property. The offender's family is ready to welcome her back to their family if she will not be allowed to go back to her matrimonial home and support her till, she is stable financially, emotionally, mentally and physically to fend for herself. While in prison, she has acquired some skills which will enable her to cope in life as per attached copies of certificates. It was also noted that her action was out of provocation after the deceased forced her to have sex, an act he had tried before. She ran out of patience and could not stomach any more, leading to the unwarranted attack which led to the death of the victim.

Determination

19. 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.

20. I take note of the fact that accused is a first offender. I have considered circumstances surrounding the offence. From the report and facts, the accused was defending herself but she however used excessive force leading to the death of her brother-in-law. The victim's family are still bitter but are not opposed to non-custodial sentence if the accused will relocate. Reconciliation has been done and, in my view, non-custodial sentence will be appropriate in the circumstances.

21. Final Orders: -

Accused to serve 3 years' probation sentence.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 14TH DAY OF NOVEMBER 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

* Elvis, Court Assistant.

* Mr. Mwangi for State.

* Accused present.

* Mr. Chepngoswa holding brief for Mr. Mwaita.

