

**IN THE COURT OF APPEAL  
AT NAKURU**

**(CORAM: MATIVO, GACHOKA & ODUNGA,**

**JJ.A.) CRIMINAL APPEAL NO. NAK E011 OF**

**2022 BETWEEN**

**DENNIS KIPKURUI CHEPKWONY.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(An appeal against the sentence of the High Court of Kenya at  
Kericho (A. N. Onger, J.) dated 4<sup>th</sup> March, 2022*

*in*

***Criminal Case No. E001 of 2021).***

**\*\*\*\*\***

**JUDGMENT OF THE COURT**

1. Dennis Kipkurui Chepkwony, (the appellant) was arraigned before the High Court at Kericho on 6<sup>th</sup> January 2021 for the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The accusation against him was that on 22<sup>nd</sup> day of December 2020 at Mariam Village in Kipkelion Sub County, within Kericho County, he murdered Teresa Cheboo Cheruiyot. He pleaded not guilty to the said charge. However, on 10<sup>th</sup> December 2021, following a successful plea bargain

agreement, he pleaded guilty to a lesser charge of manslaughter.

In a ruling on sentence delivered on 4<sup>th</sup> March 2022, **Ongeri, J.** sentenced him to serve 20 years in prison and ordered the sentence to run from 6<sup>th</sup> January 2021 when he was first arraigned in court. The appellant has appealed against the said sentence contenting that it is manifestly harsh and excessive. He prays that the sentence be set aside or reduced.

2. During the virtual hearing of the appeal on 13<sup>th</sup> May 2025, the appellant appeared in person although submissions had been filed on his behalf by the law firm of Mwango Mandere & Co Advocates. The respondent was represented by learned counsel, Mr. Omutelema, Senior Assistant Director of Public Prosecutions.
3. In support of his appeal, the appellant cited section 379 (1) (a) and (b) of the Criminal Procedure Code which outlines the appeals process from the High Court to the Court of Appeal for convicted individuals. Specifically, the said provision details the rights of appeal for those sentenced by the High Court. In terms of the said provision, a person convicted on a High Court trial and sentenced to death, imprisonment exceeding

twelve months, or a fine exceeding two thousand shillings,  
may appeal against  
the conviction on grounds of law, fact or a combination of both,

and with the leave of this Court against the sentence unless the sentence is one fixed by law.

4. The gravamen of the appellant's case is that the sentence is manifestly harsh and excessive. In his submissions, his mitigation was not considered. He cited this Court's decision in ***Felix Nthiwa Munyao vs. Republic Criminal Appeal No. 187 of 2000*** which underscored the need for a court to consider the circumstances of a case while passing sentence. He maintained that the trial court placed more weight on the aggravating circumstances and failed to consider the mitigating factors, such as his remorse, being a first offender, the period he spent in custody, his age and the fact that he has young children.
5. The appeal is opposed. The respondent's counsel maintained that the trial judge exercised her discretion taking into account the nature of the offence and the reckless manner in which an innocent life was lost while imposing the sentence of 20 years, therefore, the sentence of 20 years is sufficient retribution and urged this Court to dismiss the appeal.

6. It is settled law that a court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence imposed simply because it prefers a different punishment. To do so would be to usurp the sentencing discretion of the trial court which is impermissible. This is because sentencing remains pre-eminently within the discretion of the sentencing court. In **Ogolla s/o Owuor vs. Republic, [1954] EACA 270** the Court of Appeal for Eastern Africa was emphatic that an appellate court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors. This Court in **Bernard Kimani Gacheru vs. Republic [2002] eKLR** stated:

***“It is now settled law..., 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 states is shown to exist.”***

7. At the centre of this appeal is the appellant’s contention that the sentence of 20 years is harsh and excessive. He faults the trial court for placing more weight on the aggravating circumstances and failing to consider the mitigating factors highlighted above. To appreciate the veracity or otherwise of this accusation, it is imperative we recall what the learned Judge stated. In the ruling on sentence, the learned Judge had this to say:

***“7. The Probation Officer filed a pre-sentence report dated 10<sup>th</sup> February 2022 giving the social background of the accused person.***

***8. The report states that the accused is the son of the victim who was a single parent with six children.***

***9. The report also states that the accused person is anti-social, cunning in nature and used to abuse alcohol.***

***10. I find the accused person is not suitable for a non-custodial sentence.***

***11. The accused person killed his mother own (sic) in her own house following reports from his wife that she had threatened his wife and children with death.***

***12. He deserves to be punished for the offence he committed.***

**13. The accused person has been in custody since 6<sup>th</sup> January 2021 when he was first arraigned in court.**

**14. The offence of manslaughter calls for a punishment of life imprisonment.**

**15. However, considering the accused person pleaded guilty to the charge and saved this court's time for trial, this court sentences him to 20 years imprisonment.**

**16. The period the accused has been in custody to be deducted from the sentence period during the computation of the 20 years imprisonment.**

**The sentence will start to run from 6<sup>th</sup> January 2021 when the accused person was first arraigned in court."**

- 8.** As the Supreme Court observed in **Muruatetu & Ano. vs. Republic; Katiba Institute & 5 Others (Amicus Curiae) [2017] KESC 2 (KLR)** it is during sentencing that the court hears submissions that impact on sentencing. The above excerpt clearly shows that the appellant was afforded an opportunity to render his submissions on sentence and the court also took into account the probation officers pre-sentence report.
- 9.** A sentence is deemed harsh and excessive if it is disproportionate to the crime, fails to consider the offender's circumstances or violates fundamental rights. Courts will interfere with a trial court's sentencing discretion only if the

sentence is manifestly excessive or if the trial court made a material error in principle.

The sentence must be proportionate to the seriousness of the

offense and the offender's culpability. A sentence that is too lenient or too severe for the crime is considered disproportionate. Therefore, an appellate court is required to assess disproportionality by examining the specific circumstances of each case, considering the crime, the offender and the interests of society. If a sentence is deemed grossly disproportionate, an appellate court may interfere. Courts must consider both aggravating and mitigating circumstances when sentencing. Mitigating circumstances, such as the accused's mental state or the possibility of reformation can lead to a reduction in the sentence. In **Francis Karioko Muruatetu & Ano. vs. Republic & Others** (supra) the Supreme Court underscored the importance of individualized sentencing and the need to consider mitigating circumstances in death penalty cases.

10. Notwithstanding the arduous duty that a sentencing court is seized with, the exercising of a sentencing discretion is aimed at the attainment of a balance. The balance is directed at three prominent factors, namely, the crime, the offender and the interests of the community. (See the South African court

decision in **S. vs. Zinn 1969 (2) SA 537 (A) at 540G-H**). As  
was stated by

the South African Court of Appeal in **S. vs. RO & Ano. 2000**

**(2) SACR 248 (SCA)** at paragraph [30] (per Heher JA):

***"Sentencing is about achieving the right balance or in more high-flown terms, proportionality. The elements at play are the crime, the offender, the interests of society with different nuance, prevention, retribution, reformation and deterrence, invariably there are overlaps that render the process unscientific, even a proper exercise of a judicial function allows reasonable people to arrive at different conclusions. "***

11. If the balance between the nature of crime committed and the amount of punishment given is not maintained, then it fails the entire purpose of the criminal trial and the purpose of the principles of the criminal justice system. The sentencing process contains the essence of the criminal trial as the ultimate success of it lies in awarding the appropriate sentence to the convict. We have carefully studied the trial Judge's ruling on sentence. We note that the trial Judge carefully considered the appellant's mitigation, the circumstances under which the offence was committed, the individual circumstances of the appellant, the pre-sentencing report, the fact that the appellant pleaded guilty thereby saving judicial time and ultimately imposed an appropriate

sentence which in our view cannot be said to be

harsh or disproportionate to the offence. The learned Judge also ordered the sentence to run from the time the appellant was first arraigned in court. We find no misdirection on the part of the learned Judge. Accordingly, there is no justification for this Court to interfere with the sentence of 20 years imposed by the trial court. The ultimate conclusion is that this appeal is devoid of merit and is hereby dismissed.

**Dated and delivered at Nakuru this 3<sup>rd</sup> day of October, 2025.**

**J. MATIVO**

.....  
**JUDGE OF APPEAL**

**M. GACHOKA C.Arb, FCIArb.**

.....  
**JUDGE OF APPEAL**

**G. V. ODUNGA**

.....  
**JUDGE OF APPEAL**

*I certify that this is  
a true copy of the  
original.*

*Signed.*

**DEPUTY REGISTRAR.**