



**Republic v Mosin (Criminal Case E008 of 2023)  
[2025] KEHC 15176 (KLR) (23 October 2025) (Sentence)**

Neutral citation: [2025] KEHC 15176 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE E008 OF 2023  
RB NGETICH, J  
OCTOBER 23, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MUSA CHEBOSKWONY MOSIN ..... ACCUSED**

**SENTENCE**

1. The accused Musa Chesire has 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 on the 19<sup>th</sup> and 20<sup>th</sup> day of November 2022 at Kaptombes shopping centre of Mochongoi ward in Marigat subcounty within Baringo county, accused murdered Jonathan Kiplangat Kipserich.
2. The accused denied the charge. Upon close of trial, judgement was delivered on the 30<sup>th</sup> April, 2025 this Honourable court found the accused person guilty and convicted him of the offence of manslaughter contrary to section 202 as read with 205 of the penal code. Upon the conviction, the prosecution informed the court that the accused be treated as a first offender. The court directed that a pre-sentence report to be filed before mitigation. The report was filed as directed.

**Presentence Report**

3. From the report, the accused is 20 years old but when the matter was mentioned on 24<sup>th</sup> July 2025, the defence counsel informed court that her instructions were that at the time of the offence, the applicant was 17 years old. I directed that age assessment be done and further inquiry be done by the probation officer. On 29<sup>th</sup> September 2025, a birth certificate was filed which indicated accused's date of birth as 10<sup>th</sup> may 2006. The prosecution counsel indicated that they were not challenging the birth certificate and agreed that at the time of offence, the accused was 17 years old.



4. From presentence report, the accused was arrested before joining form 2. Further that the accused consumed alcohol and spent most of his time playing pool and therefore had poor school attendance. He is single with a child aged 5 years who is currently staying with the mother.
5. From the report, the incident herein occurred when the deceased dipped his hand in accused's pocket and took Kshs 600/= while they were playing pool which gave rise to a scuffle and in the process, the accused hit the victim on the head.
6. The accused and victim were neighbors and they studied in one primary school and the victim was 22 years old married with one child. The victim's family indicate that their healing has been delayed by the fact that no reconciliation as taken place due to laxity of accused's father. The accused admits the offence and attribute it to alcohol influence at the time. He says attempts to reconciliation failed though report indicate that accused's brother went to victim's home only once.
7. The local administration confirmed that reconciliation has not taken place and attribute the offence to negative peer pressure and excessive use of alcohol. The local administration and community are of the view that the accused's life will be endangered if released on non-custodial sentence as the victim's family are still bitter.

### **Mitigation**

8. Mr. Kipkulei who was holding brief for Ms. Kogo submitted that the accused is remorseful for the offence and blames drunkenness for the offence and that he did not have malice aforethought; that he has learnt a lot while in prison, that he regrets the offence and has learnt how to contain his anger. He submitted that the victim was accused's friend and schoolmate and that it pains him that he has lost a friend and prayed for non-custodial sentence.
9. Ms. Kosgei the prosecution counsel urged court to pass maximum sentence of manslaughter which is life sentence on ground that although accused admits the offence, he has not shown remorse by compensating the secondary victims who are still bitter. She prayed for deterrence sentence.

### **Determination**

10. Under section 205 of the penal code, the penalty for manslaughter is life sentence. have considered the mitigation by the accused, the fact that he is an elderly man, and the fact that he is a first offender. From the report, the family of the victim are still bitter and are opposed to non-custodial sentence.
11. I take note of the fact that the accused was a minor at the time of the offence, having been 17 years old. From the pre-sentence report, the family of the victim are still bitter as no reconciliation has taken place. In my view, he was a minor and ought to be treated as such in sentencing. He did not have the mind of an adult at the time of the offence and his moral culpability must therefore be assessed in light of his age, immaturity, and impulsivity.
12. The Court of Appeal in Republic v Dennis Kirui Cheruiyot [2021] eKLR emphasized that age and youth are significant mitigating factors because they affect the ability to control impulses and appreciate the consequences of one's actions. The Court stated that  

“ a youthful offender, particularly one who was under eighteen years at the time of the offence, should benefit from leniency as their moral blameworthiness is lessened by immaturity.”
13. Similarly, in John Kenga v Republic [2022] KECA 572 (KLR), the Court reiterated that where the offender was below 18 years at the time of the offence, the trial or sentencing court must take into



account the diminished responsibility attendant to such youth, even if the offender has since attained majority.

14. In *Republic v S K* [2018] eKLR, the High Court held that the sentence must reflect both the best interests of the child and detention of a child should be a measure of last resort. However, the court recognized that where release into the community may expose the offender or the community to danger, the court retains discretion to impose a custodial sentence geared towards rehabilitation rather than retribution.
15. In *Republic v Joseph Kipkemboi Chebii* [2019] eKLR, the court adopted a similar view, holding that while a 17-year-old offender was entitled to be treated as a child, where borstal or reformatory options were impracticable because of age or community hostility, the court could impose a shorter custodial term coupled with a strong rehabilitative recommendation.
16. I have considered the provisions of Article 53(1)(f) of *the Constitution*, which require that every child has the right “not to be detained except as a measure of last resort, and when detained, to be held for the shortest appropriate period.” Although the accused is now 20 years old, the offence was committed while he was still a minor, and I am bound to apply that constitutional protection in the spirit of fairness and proportionality.
17. I am therefore persuaded that the appropriate approach is to treat him as having been a child offender, while recognising that he will serve sentence as an adult. I find that a non-custodial sentence is unsafe given the hostility from the community and the potential threat to his life if returned home. The purpose of sentence in this case should be rehabilitation and reintegration after the community has healed.
18. Taking into account the mitigating factors of youth, remorse, and lack of premeditation; against the aggravating factors of loss of life and lack of reconciliation, I find that a custodial sentence of seven (7) years imprisonment is appropriate. This sentence will provide a structured environment for rehabilitation and counselling, while allowing for his eventual reintegration into society.

**Final Orders:-**

- a. The accused, Musa Cheboskwony Mosin alias Musa Chesire , is hereby sentenced to seven (7) years imprisonment for the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code.
- b. In computing the sentence, the period already spent in custody shall be taken into account pursuant to section 333(2) of the Criminal Procedure Code .
- c. The Prison Authorities are directed to ensure that the accused is placed in a facility with access to counselling, vocational training, and alcohol rehabilitation programmes to aid in his reform and reintegration.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 23<sup>RD</sup> DAY OF OCTOBER , 2025.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of :-

Ms. Bartilol for State.



Ms. Kogo for accused.

Accused present.

CA, Elvis.

