



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT ELDAMA RAVINE (SUB-
REGISTRY**

CRIMINAL CASE NO. E041 OF 2023

REPUBLIC.....PROSECUTOR

VERSUS

CHRISTOPHER SHIVACHI.....1ST ACCUSED

ANDREW CHIRCHIR SERGON.....2ND ACCUSED

JULIUS KIPROTICH KOSKEI.....3RD ACCUSED

RULING ON SENTENCE

1. Accused 1 CHRISTOPHER SHIVACHI, accused 2 ANDREW CHIRCHIR SERGON and Accused 3 JULIUS KIPROTICH KOSKEI together with 4th accused were jointly 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 on the night of 7th and 8th July 2022 at Kapchorwa village, Sirwa location in Mogotio Subcounty within Baringo county the accused persons jointly killed Jane Jemutai Yegon. Upon

hearing, Accused 1, 2 and 3 were jointly convicted of the murder while Accused 4 was acquitted.

2. Upon conviction, the prosecution counsel informed the court that the 3 accused persons may be treated as first offenders as they had no previous records.

MITIGATION

3. Mr. Chebii mitigated on behalf of the 1st accused. He submitted that the 1st accused is remorseful, he is married with 3 children and he is the bread winner for his family. He prayed for a lenient sentence as his children are young. He said presentence report is not favourable but urged court to exercise discretion.
4. Ms Esang holding brief for the 3rd accused submitted that the presentence report dated 18th September 2025 is favourable to the 2nd accused. She submitted that he is a teacher and has been a good member of the society; that he has served under TSC and there has not been any complaint against him; that the report indicate he is a man of few words with no issues with anybody. That he has a wife and children who solely depend on him. She submitted that the victim's family confirmed that they had no issue with the 2nd accused. She prayed for noncustodial sentence as he is not harmful to the society and he can be rehabilitated.

5. Mr Arusei who appeared for the 3rd accused at sentencing stage submitted that the 3rd accused is remorseful, he is a first offender and that he is married with 6 children who solely depend on him as the sole breadwinner. counsel submitted that the 3rd accused separated with his wife in the year 2014 and that he has singlehandedly taken care of the children. He prayed for leniency so that he can take care of the children. He submitted that presentence report proposes that the court gives the 3rd accused opportunity to pursue reconciliation. He submitted that the 3rd accused attempted reconciliation with victim's family but they did not accept but court can advise parties to reconcile. He submitted that the accused pleads for leniency as the 3rd accused's children will suffer if he goes to jail. He submitted that 3rd only had been purchased for him and he had nothing to do with the death of the deceased.; that from the report, he is a person of good reputation and prayed for him to be restored to his family.

PRESENTENCE REPORT

1ST ACCUSED'S REPORT

6. From the report he is 1st accused is 35 years old. He dropped out of school in class 6 due to eye problem and started doing casual jobs until the time he was arrested. He relocated to Sirwa in the year 2022 where he was employed by the deceased as a herd's man and he worked until the time of his arrest. He is married with 3 children

7. He still denies the charge and says he had nothing to do with the death of the deceased. He stated that he went to charge his phone in the house of victim's son and found her phone and since he knew her pin, he checked mpesa balance and saw that she had Kshs 174,000. he decided to withdraw Kshs 172,000 in bits of Kshs 80,000,80,000,10,000 and Kshs 2000 at around 2 a.m. He stated that the next morning, he woke and did his usual work and the deceased had left and later at around 3 p.m., a neighbor who used to buy milk at the home informed him that a body had been seen in the forest. He said he followed the lady to the scene and identified the deceased's body.
8. The victim's family are still hurting for the loss of their kin. The deceased's husband stated that the 1st accused planned how to eliminate his wife after stealing the money and said it would have been better if he only took the money. He said that the family has been going through difficult time which has delayed their recovery and that they are not for reconciliation
9. 2nd Accused's report, the 2nd accused was a PTA teacher at Kapsok primary school until June 2025 when he was employed by TSC. He was at Kapsok primary school at the time of arrest. He is single but has a child out of wedlock whose mother is married elsewhere. He does not admit the charge. He says he was a customer to the deceased as he used to buy tobacco from her. He stated that on the night deceased died, he had purchased tobacco worth Kshs 10 from the deceased which

resulted in him being suspected. He said he was from school when he found a crowd in the forest where deceased's body was found. He later learnt it was the deceased and was devastated as he had no idea of what happened to her.

10. From the report, the victim was married with 6 children who have been left without a mother. The deceased's husband said the 2nd accused used to do casual jobs for them during school holidays and was a friend to the family. He was non-committal issue of sentence and left it to court
11. The community said the 2nd accused was of good reputation before the incident. That he has no issue with community. They prayed that he be acquitted
12. The local administrator also talked well of the 2nd accused; that he has no criminal record. He confirmed that he was a frequent buyer of tobacco from the deceased. He is not opposed to community-based rehabilitation
13. 3rd Accused's report, the 3rd accused sat for KCPE but did not proceed to secondary school due to financial constraints. He does not admit the charge. He said he was employed by deceased's daughter in the year 2018 in kikein farm in Sirwa. He said on 2nd July 2022, the deceased called her to her home to collect salary that had been sent by deceased's daughter He stated that the deceased asked him to work at kipkein farm and she left to her daughter's home at kipkein; that she was to

pass kipkein farm but she didn't. He stated that he went to Kapchorwa farm to collect nails and found 1st accused who informed him that the deceased had gone to kipkein farm. He stated that he waited for her for one hour but she didn't arrive and he went to kipkein farm. In the evening he learnt for a neighbor who called and informed him that the deceased had been found dead in the forest.

14. The victim's family confirmed that the 3rd accused had worked for them from year 2018 but did not commit themselves on sentencing
15. The community said the 3rd accused is a respectable person with no criminal records. The area administrator on accused's side said 3rd accused had good community ties and the administrator from victim's side said 3rd accused was a good worker to the deceased and has no criminal record.

ANALYSIS AND DETERMINATION

16. I have carefully considered the mitigation advanced on behalf of each of the accused persons, the presentence reports, the circumstances of the offence, and the victim impact statements. I have also been guided by the objectives of sentencing under paragraph 4.1 of the Sentencing Policy Guidelines (2023): punishment, deterrence, rehabilitation, community protection, and restorative justice.

17. The accused were convicted of the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The offence attracts a maximum penalty of death. However, following the Supreme Court's decision in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR, the mandatory nature of the death penalty was declared unconstitutional, and the court now retains discretion to impose an appropriate sentence depending on the facts of each case.
18. In this case, the deceased, a middle-aged woman and mother of six, lost her life in painful and distressing circumstances. Evidence showed that the 1st accused, who was employed by the deceased, stole money from her and later participated in concealing the crime. The deceased's family continues to endure emotional suffering and has not healed from the loss. This aggravates the moral blameworthiness of the 1st accused.
19. The 2nd and 3rd accused, though convicted alongside the 1st accused, appear to have played a lesser role. The reports and evidence suggest that they were drawn into the events without active participation in the killing. The community and local administration described them as individuals of good character who had previously lived peacefully and were not known for any criminal conduct.

20. In mitigation, the 1st accused expressed remorse but continued to deny responsibility. The presentence report is unfavourable and the victim's family remains opposed to reconciliation. For the 2nd and 3rd accused, the reports are more favourable—each is a first offender with strong family and community support, and both are considered suitable for rehabilitation. There is, however, no admission of guilt or meaningful restorative engagement.

21. In determining the appropriate sentence, I have considered the principle of proportionality and the need to impose a punishment that reflects both the gravity of the offence and the individual circumstances of each offender. Murder is a grave offence, but the degree of culpability among the three accused is not equal.

22. For the 1st accused, the evidence points to him as the instigator of the events that led to the death of the deceased. He breached the trust of his employer, and his actions caused irreversible harm to the family. In view of the seriousness of his conduct and its devastating consequences, a custodial sentence of **thirty (30) years imprisonment** is, in my view, proportionate and just.

23. As regards the 2nd and 3rd accused, their lesser involvement, favorable social inquiry reports, and demonstrated potential for reform call for leniency. Their continued incarceration for an extended period would not

significantly advance the objectives of deterrence or rehabilitation. I accordingly find that a sentence of **seven (7) years imprisonment** for each is sufficient punishment and affords an opportunity for rehabilitation and reintegration into society.

24. **FINAL ORDERS:** -

- a) Accused 1 to serve 30 years imprisonment.
- b) Accused 2 and Accused 3 to serve 7 years imprisonment.
- c) Pursuant to section 333(2) of the Criminal Procedure Code, the period each accused served in remand to be computed in the sentences above.
- d) Right of appeal on both conviction and sentence within 14 days explained.

Ruling delivered, dated and signed Virtually at Kabarnet this **13th of November 2025.**



.....
RACHEL NGETICH
JUDGE

In the presence of:

- CA Karanja.
- Ms. Omari for state.
- Mr. Chebii for Accused1

- Ms. Esang H/b for Mr. Mongeri for Accused 2.
- Mr. Arusei for Accused 3.
- Accused 1.
- Accused 2.
- Accused 3.

ORIGINAL