



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDAMA RAVINE**  
**CRIMINAL CASE NO.003 OF 2023**

REPUBLIC ..... PROSECUTION  
VERSUS  
WYCLIFF KIPKORIR CHEMOIWO .....ACCUSED

**RULING ON SENTENCE**

1. The accused person, **WYCLIFF KIPKORIR CHEMOIWO** was charged with the offence of murder contrary to Section 203 as read with section 204 of the Penal Code. Particulars are that on the 4<sup>th</sup> day of March, 2023 at Katane village, kabutei location in Baringo North subcounty within Baringo County the accused murdered JOSEPH CHEMOIWO CHEBII.
2. After hearing of prosecution case, by ruling delivered on 15<sup>th</sup> May, 2025, the court found that prima facie case had been established to warrant accused be placed on his defence.
3. On 15<sup>th</sup> may 2025, the defence counsel informed court that there were new developments. He informed court that the parties were negotiating with a view of entering into plea agreement .Plea agreement was recorded and the charge

was reduced to manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. He pleaded guilty.

4. Upon conviction, the prosecution counsel informed court that the accused was a first offender. I called for presentence report before mitigation which was filed on 11<sup>th</sup> July 2025.

### **CIRCUMSTANCES OF THE OFFENCE**

5. On 4.3.2023, at 7 p.m. the deceased who is accused's father was informed by his daughter Mercy that accused had taken maize from the store and sold to buy illicit brew. After Mercy had gone to the river, accused arrived and the deceased asked him about the maize. A fight ensued and the accused hit the deceased severally with a stick on the head after which he entered his house took bow and arrows and threatened his family. The family escaped. The deceased died as a result of the injuries. Upon postmortem, the doctor concluded that the deceased died as a result of severe head injury secondary to blunt force trauma. Postmortem report was produced in court as exhibit.

### **PRESENTENCE REPORT**

6. The victim's family indicated that they have already forgiven the accused. They confirmed that the offence took place within the family and the family have forgiven him. They said the accused's safety within the community is guaranteed

and they are not opposed to non-custodial sentence. They commit to support him in reintegration.

7. The local administration said the accused's major challenge is alcohol consumption and confirmed that at community level, his safety is guaranteed. They are not opposed to community-based rehabilitation.

### **MITIGATION**

4. The defence counsel Mr.Kipkulei mitigated on his behalf. He submitted that the accused is 23 years old and that he was provoked severally by his father the deceased herein before he turned on the deceased and out of heat of passion, he hit his father severally and the deceased succumbed. He submitted that the accused was drunk and had been accused by his father of stealing maize. He submitted that after accused became conscious, he asked what he had done before he was arrested. He submitted that he is an orphan and the only boy child at home. He submitted that the family have come to terms with the loss of their father and are willing to rehabilitate the accused. Further that the local administration are not opposed to non-custodial sentence. He submitted that the accused has been in custody and is praying for non-custodial sentence.

## **DETERMINATION**

6. The offence of murder under Section 204 of the CPC attracts a penalty of mandatory death sentence but in view of decision supreme court in the case of Muruatetu II where the Supreme Court declared mandatory nature of death sentence unconstitutional. The court now has discretion to impose a lesser sentence depending on circumstances of each case.
7. I have taken into consideration the objectives of sentencing being deterrence, rehabilitation, retribution, restorative justice, and protection of the public.
8. Further, in considering the appropriate sentence, I have taken into account:
  - a) The nature and gravity of the offence;
  - b) The circumstances under which it was committed;
  - c) The character of the offender;
  - d) The victim's circumstances and impact;
  - e) The time already spent in custody.
9. Circumstances of this case is that the accused murdered his father after hitting severally after being question for stealing maize to sell in order to buy alcohol. The local administrator conformed that the accused's problem is heavy consumption of alcohol.

10. The family who are secondary victims have indicated that they are willing to accept accused back, however in my view, looking at the circumstances surrounding the offence; the fact that the deceased who was drunk hit his father on the head severally killing him and thereafter arming himself with bow and arrows to threaten his family members are aggravating circumstances. The local administration has concern on his excessive alcohol consumption and I agree with him that it needs to be addressed. His anger management also need to worked up.in my view releasing him to the family and community before rehabilitation will be endangering his family and people around him. The family may have reached consensus to have him back because he is the only son but he remains a danger to his own family if not rehabilitated. I am of the view that custodial sentence will be appropriate in the circumstance.

11. **FINAL ORDERS:**

- a) Accused to serve 15 years imprisonment
- b) Period served by the accused in custody to be computed in the above sentence under Section 333(2) CPC.
- c) Right of appeal explained.

**Dated, signed and delivered at Kabarnet this 4<sup>th</sup> Day of December 2025.**



**HON. RACHEL NGETICH**  
**JUDGE**

**In the presence of:**

- Ms.Omari H/B for Ms. Kosgei for Accused
- Mr. Kipkulei for Accused.
- CA, Karanja
- Accused Present

ORIGINAL