



REPUBLIC OF KENYA
IN THE HIGH COURT KENYA AT NAKURU
CRIMINAL CASE NO. 68 OF 2016

REPUBLIC.....PROSECUTOR
VERSUS
MERCY CHEPCHUMBA KOSGEY.....ACCUSED

SENTENCE

1. **Mercy Chepchumba Kosgey** the accused arraigned before Court on the 21st November 2016, and charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars are that; the Accused on the 13th November 2016 at Mariashoni Location within Molo Sub-County of Nakuru County Murdered **Erick Kiplangat Chesaina**.
2. On the on 30th July 2025, this Court found guilty and convicted the accused on a lesser charge of manslaughter on her own plea of guilty, reserving this sentence to await, pre-sentencing report by the Probation Department and the victim impact statement as well as mitigation by the accused.

Analysis and Determination.

3. It is the duty of this Court to impose a sentence that meets the facts and circumstances of the case; this Court has considered the full circumstances of the offence which is contained in the Facts;

“That, on the 13th November 2016 at 5pm, the accused was in her house where she lived with the deceased who came while intoxicated and asked the accused to prepare which she responded that she had not as she was out for some casual job.

That the deceased was agitate by the response, held the accused by the collar and threw her to the ground from where she picked a piece of timber and hit the deceased on the he-ad.

The Deceased Fled but was apprehended by members of the public who escorted her to the police.

The deceased succumbed to his injuries

A post mortem performed on the body of the deceased concluded that he died as a result severe head injury from both blunt force trauma and sharp injuries.

The accused was subjected to mental assessment and was found fit to stand trial and she was charged with the offence of murder and which is substituted with that of manslaughter.

A Post Mortem examination report Form produced in support of the charge

- 4. Mercy Chepchumba Kosgey, expresses regret and remorse for her action, saying that she attributes her offence to anger issues out of provocation from the deceased while being intoxicated. She however**

regrets her actions and takes full responsibility of them.

5. The Sentencing Policy Guidelines (2023) informs sentencing in Kenya to achieve proportionality, Equality, Uniformity, Parity, Consistency, Impartiality, Accountability/Transparency and Inclusiveness.
6. Sentencing is a discretion of the trial Court. In **Bernard Kimani Gacheru –Vs- Republic (2002) eKLR**, the Court of Appeal stated that:-

“It is now settled law, following several authorities by this Court and by the High Court, 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 stated is shown to exist.

7. This Court is alive to the prime objectives of the criminal law, which is imposition of an appropriate, adequate, just and proportionate

sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done and that there is no straightjacket formula for sentencing an accused on proof of crime.

8. The principle of proportionality is grounded within the concept of just deserts and is embraced by common law. In **Hoare v The Queen (1989) 167 CLR 348**, it was stated that;

“a basic principle in sentencing law is that a sentence of imprisonment imposed by the Court should never exceed that which can be justified as appropriate or proportionate to the gravity of the crime considered in light of its objective circumstances”.

9. What sentence would meet the ends of justice? depends on the peculiar facts and circumstances of each case and the Court must keep the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances close in mind. (See **Charles Ndirangu Kibue v Republic [2016] eKLR**). Further, the Court ought to bear in mind the obligation imposed on it by the Judiciary Sentencing Policy Guidelines to consider the aggravating and mitigating circumstances and their effects on the sentence in determining the most suitable sentence.

10. The applicable law on sentence for the offence of manslaughter is found under the provisions of **Section 205** of the Penal Code which reads as follows;

‘Any person who commits the felony of manslaughter is liable to imprisonment for life’

11. The section provides for the maximum sentence, that is life imprisonment and this Court has taken into consideration the aggravating circumstances in that, the convict used a piece of timber to hit the accused in committing the offence; the facts reveal that the killing was not premeditated; the accused in a moment of uncontrolled anger having lost out in a scuffle with the deceased who had pushed the accused down and she collected the piece of timber and hit the deceased before fleeing the deceased succumbed to the injuries.
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12. The mitigating factors taken into consideration by this Court are that the accused are the personal circumstances of the accused that she has also expressed her remorse and is deemed to be a first offender; she has six children.
13. Reconciliation has been achieved as the two families entered into a reconciliation agreement on the 28th October 2025 and a handwritten agreement of the proceedings is on file. The offense appears to be an isolated incident. She has been in pre-trial remand custody for over nine (9) years. She demonstrates a strong potential for rehabilitation. Her family's support and forgiveness play a significant role in her rehabilitation prospects.
14. In the circumstances, I will impose upon the convict a sentence of eight (8) years comprising of **Imprisonment of Five (5) years** and **probation term of three (3) years** from the date of completion of the imprisonment sentence.

15. The Period of imprisonment shall run from 13th November 2016 and that, she shall be eligible to benefit from the Prison Remission Program.
16. During the probation period, she shall be under the Supervision of a Probation Officer Nakuru County. She is cautioned to adhere to the following terms:
- i) **Mercy Chepchumba Kosgey, should observe the following while serving the Probation sentence;**
 - a) **She is warned that a Probation sentence is not an acquittal, or discharge, but a legitimate punishment and therefore, she should be careful to diligently serve the sentence as required by the Court and probation officer.**
 - b) **She will obey the Probation Officer supervising her and adhere to all the conditions or terms set as part of that supervision.**
 - c) **She should be of good behavior and not commit any penal offence during the pendency of her sentence.**
 - ii) **Mercy Chepchumba Koskey, is warned that failure to abide by ANY of the terms under i) above will result in her arrest and committal to an imprisonment term.**

It is So Ordered.

**Signed, Delivered Virtually on Teams platform
On this 19th January 2026**

**Mohochi S.M
Judge**

Quorum

Schola CA

Ms. Ngugi Advocate for the Accused

Ms. Mwaura Snr. Prosecution Counsel