

**IN THE COURT OF
APPEAL AT KISUMU**

(CORAM: ASIKE-MAKHANDIA, OMONDI & KIMARU, JJ.A.)

CRIMINAL APPEAL NO. 196 OF 2020

BETWEEN

FELIX IKAROT.....APPELLANT

AND

REPUBLIC.....RESPONDENT

*(Being an appeal from the Judgment of the High Court of
Kenya at Busia,
(Waweru, J) dated 17th February 2020)*

in

HCCRC No. 18 of 2018)

JUDGMENT OF THE

COURT

[1] This is a first appeal against the sentence only of twenty-five years imprisonment following the conviction and sentence of the appellant by Kiarie Waweru Kiarie J., on the 17th February 2020, in Criminal Case No. 18 of 2018 for the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. It is settled law that this Court will not interfere with the discretion exercised by the trial court in matters sentencing unless it is demonstrated that the trial court acted on wrong principles, that

the sentence imposed was manifestly

excessive or harsh in the circumstances, or that the court overlooked

material factors or took into account irrelevant considerations. This threshold guides the appellate court in determining whether the sentence imposed should be disturbed.

[2]The appellant, **Felix Ikarot**, was initially charged jointly with others for the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code. The particulars alleged that on 22nd July 2018, at Osajai village in Teso North Sub-County within Busia County, the appellant and others unlawfully murdered one, **Loreta Akiru Papa, “the deceased”**. The deceased was found murdered in her house cum business kiosk after she had been sexually assaulted. Suspicion immediately fell on the appellant and others as the deceased had previously complained that they had insulted and threatened her with dire consequences on several occasions. The appellant and others were eventually arrested and arraigned before the High Court of Kenya at Busia.

[3]They all entered a plea of not guilty and their trial ensued. Midway through the trial, the appellant opted to enter a plea bargain with the prosecution after he was placed at the scene of crime by forensic evidence. Plea bargain agreement was subsequently entered into pursuant to **Section 137A-O** of the Criminal Procedure Code. Under the agreement, the information was reduced from

murder to the lesser

offence of manslaughter contrary to **Section 202** as read with **Section 205** of the Penal Code, to which the appellant freely and voluntarily pleaded guilty to.

[4] The plea agreement was recorded in court, with the appellant acknowledging that he understood the elements of the offence, the penalties provided by law, and that he was waiving his constitutional rights to trial and cross-examination of witnesses. The agreement further provided that if the court rejected the plea, the original information of murder would proceed to its logical conclusion.

[5] The factual basis underpinning the plea was that on the morning of 22nd July 2018, one Daniel Onyapidi Papa went to the kiosk of the deceased to collect some money from her. He found the kiosk slightly open but received no response from the deceased when he knocked the door. Upon entering the deceased's bedroom, he discovered her lifeless body, half-naked. He immediately reported the occurrence to Malaba Police Station, and the body was evacuated to Kocholia Sub-County Hospital mortuary.

[6] Investigations commenced, and suspicion fell on the appellant and the others, who had previously threatened the deceased with death. When the police were closing in on the appellant, he attempted to flee towards Uganda border but was apprehended by

members of the public

and handed over to police officers who immediately re-arrested him. A postmortem examination established the cause of death as asphyxiation and further that she had been sexually assaulted in the process. A psychiatric evaluation confirmed that the appellant was fit to stand trial and competent to enter into the plea bargain. The trial court, having considered the facts, the postmortem report, the psychiatric evaluation, and the circumstances of the offence, convicted the appellant of manslaughter and sentenced him to twenty-five (25) years imprisonment.

[7] In imposing sentence, the court noted the seriousness of the offence, the violent circumstances leading to the death of the deceased, and the need to protect society. The court also considered the appellant's admission of guilt, but emphasized that the offence involved the unlawful taking of life in circumstances that were grave and aggravated bordering on gender-based violence because of the Sexual assault.

[8] It is against this sentence that the appellant now appeals to this court stating in his memorandum of appeal that the sentence imposed was manifestly harsh and excessive in the circumstances.

[9] When the appeal was called out for hearing, the appellant was represented by **Ms. Mawinda**, learned counsel, whilst the

respondent appeared through **Ms. Mutellah** learned Prosecution counsel. They all

opted to rely fully on their respective written submissions that they had filed and exchanged.

[10] Counsel for the appellant submitted that the sentence of twenty-five (25) years' imprisonment imposed on the appellant was manifestly excessive and harsh in the circumstances, and that this Court ought to interfere with it. She argued that the trial court erred by concentrating on the aggravating circumstances of the offence while failing to give due weight to the mitigating factors, including his remorse, youth, first-offender status, and the fact that he entered into a plea bargain.

[11] Counsel emphasized that jurisprudence recognizes that a guilty plea should attract a sentencing discount. Reliance was placed on **Muruatetu & Another v Republic; Katiba Institute & 5 Others (Amicus Curiae) [2017] KESC 2 (KLR)**, where the Supreme Court held that a plea of guilty is a relevant factor in sentencing. This principle is echoed in paragraph 4: 8: 20 of the sentencing Policy Guidelines by the National Council on the Administration of Justice Guidelines 2023 which provide that courts should grant up to one-third reduction of the sentence where a plea of guilty is entered at the earliest opportunity. The appellant contended that the trial court failed to apply this principle.

[12] Reference was also made to **Mwangi v Republic [2024] KECA 928 (KLR)**, where this Court observed that an accused who pleads guilty saves judicial time and guarantees conviction, and therefore should “reap the fruits of his surrender” unless there are aggravating circumstances. Similarly, in **Dennis Osoro Nyatigo v Republic [2024] KECA 1820**, the Court reiterated that one of the benefits of a plea bargain is a reduced sentence, a position reinforced by **Section 137I(2)-(3)** of the Criminal Procedure Code which obligates courts to consider the stage of plea, time spent in custody, and other mitigating factors.

[13] Counsel further relied on **Mutai v Republic [2025] KECA 1357 (KLR)**, where a sentence of 50 years’ imprisonment imposed after a plea bargain was reduced to 20 years, and on **Julius Wafula Lukorito v Republic [2023] KECA 1447 (KLR)**, which underscored the importance of plea bargaining in enhancing efficiency and certainty in the criminal justice system.

[14] On the basis of all the foregoing, counsel submitted that the trial court failed to balance the gravity of the offence with the mitigating circumstances, and did not accord the plea bargain its due weight. Accordingly, a custodial term of 25 years was disproportionate in light of the appellant’s guilty plea, remorse,

and first-offender status, and

that justice would be served by setting aside the sentence and substituting it with a much shorter term consistent with prevailing jurisprudence on sentencing in manslaughter cases.

[15] Counsel for the respondent on the other hand submitted that the sentence of twenty-five (25) years' imprisonment imposed upon the appellant was lawful, proportionate, and within the discretion of the trial court. She argued that sentencing is a matter of judicial discretion, and an appellate court will only interfere where it is shown that the trial court acted on wrong principles, overlooked material factors, or imposed a sentence that is manifestly harsh or excessive. She cited **Ogolla s/o Owuor v Republic [1954] EACA 270**, **Wanjema v Republic [1971] EA 493** and **Bernard Kimani Gacheru v Republic [2002] eKLR**, for the proposition that in this case, the trial court properly considered both the aggravating and mitigating circumstances before arriving at sentence.

[16] Counsel submitted that the offence involved the unlawful taking of life in aggravated circumstances, the deceased having been found murdered after being sexually violated. The seriousness of the offence, the manner in which it was committed, and the need to protect society justified a deterrent sentence. She submitted that although the appellant entered into a plea bargain, a guilty plea

does not

automatically entitle an accused person to a reduced sentence where the circumstances of the offence are grave.

[17] Counsel distinguished the appellant's authorities where sentences were reduced following plea bargains, noting that in those instances the circumstances were less aggravated. In the present case, she submitted, the aggravating features outweighed the mitigating factors, and the trial court was correct to impose a custodial term at the higher end of the range for manslaughter.

[18] This being a first appeal against sentence only, we remind ourselves of the duty of this Court. In **Ogolla s/o Owuor v Republic (supra) EACA 270**, the Court of Appeal stated:

“The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors, or the sentence is manifestly excessive in view of the circumstances of the case.”

See also **Wanjema v Republic (supra)**.

[19] The single issue for determination in this appeal is whether the sentence of twenty-five (25) years' imprisonment imposed upon the appellant was harsh and excessive in the circumstances.

[20] Before we address the issue, we need to consider the question of whether a conviction and sentence entered after plea bargaining is subject to appeal. **Section 137L(1)** of the Criminal Procedure

Code is

clear that a conviction entered on a plea agreement shall be deemed to

be a judgment of the court and is subject to appeal in accordance with the law. This Court has also held in **Mutai v Republic [2025] KECA 1357 (KLR)** and **Dennis Osoro Nyatigo v Republic [2024] KECA 1820**, that appellate review of sentence remains available even where conviction is based on a plea agreement. The Supreme Court in **Muruatetu & another v Republic; Katiba Institute & 5 Others (supra)** also underscored that a guilty plea is a relevant factor in sentencing, but it does not automatically entitle an accused person to a reduced sentence where aggravating circumstances are apparent. On the whole therefore, a conviction and sentence arising from a plea bargain is appealable to this court.

[21] In the circumstances of this appeal, we note that the trial court considered the plea bargain, the appellant's admission of guilt, and his first-offender status, but equally weighed the aggravating circumstances, namely the violent nature of the offence and the fact that it was manifestly gender-based violence. The trial court exercised his discretion judiciously, balancing the relevant factors, and imposed a sentence that reflected the seriousness of the offence.

[22] We are not persuaded that the sentence of twenty-five (25) years' imprisonment was manifestly harsh or excessive. It has not

been demonstrated to our satisfaction that the trial court overlooked material

factors, considered irrelevant matters, or the sentence is manifestly harsh or excessive. The trial court, in our view, applied the correct principles, considered both aggravating and mitigating circumstances, and reached a sentence within the lawful range provided under **Section 205** of the Penal Code.

[23] Accordingly, we find no basis to interfere with the sentence imposed. In the result, the appeal is dismissed.

Dated and delivered at Kisumu this 13th day of February, 2026.

ASIKE-MAKHANDIA

.....
JUDGE OF APPEAL

H.A. OMONDI

.....
JUDGE OF APPEAL

L. KIMARU

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR