

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL CASE NO. E026 OF 2024

REPUBLIC.....

.....PROSECUTION

VERSUS

LEONARD KIPNGETICH KERICHACCUSED

JUDGEMENT AND SENTENCE

1. The Accused, Leonard Kipngetich Kerich was charged with the offence of murder contrary to **section 203 as read with section 204 of the Penal Code**. The particulars of the offence were that on 5th December 2024 at Njorwet Village, Kanusin Location in Sotik Sub-County within Bomet County, he murdered Shadrack Kiprono Tuwei.

2. The Accused took plea on 20th January 2025 where he pleaded not guilty to the charge of murder.

3. A Plea-Bargaining Agreement was filed on 29th July 2025 and it indicated that the Accused had agreed to plead guilty to the lesser offence of manslaughter. This court accepted the Plea Agreement after interviewing the Accused and satisfying itself that he executed the Plea Agreement voluntarily and that he understood his trial rights.

4. On 18th November 2025, the Accused took plea for the offence of manslaughter. The charge and every element thereof was read and explained to him in a language he understood and he pleaded guilty. The court entered a plea of guilty for the offence of manslaughter.

5. The Facts as read by the Prosecutor and captured in the Plea Agreement are as follows: -

“On the 21st day of December 2024, police officers from Mutarakwa Police Post got a report of a murder incident by one Benard Kibet Langat at around 1800 hours. Two of his brothers namely Shadrack Kiprono Tuwei and Leonard Kipngetich Kerich engaged in a fight over a phone battery resulting to one Shadrack Kiprono Tuwei being stabbed by the Accused which occasioned his death.

The officers recovered a kitchen knife purportedly used by the Accused to commit the crime.

The family had informed the state that they had forgiven the Accused and have no objection to the reduction of the charges.

The Prosecution and the Investigation team accept that: -

- i. The Accused is a brother to the deceased.**
- ii. The quarrel was as a result of a disagreement over a phone battery.**
- iii. The Accused is remorseful of the act.”**

6. The Accused accepted the facts as true and was convicted his on her own guilty plea for the lesser offence of manslaughter contrary to **section 202 as read with section 205 of the Penal Code.**

Pre-Sentence Report

7. A pre-sentence probation report was filed on 24th February 2026 and it indicated that the Accused and the victim quarreled over a mobile phone battery that had been handed over to the Accused and as a result of the quarrel, the

Accused and the deceased fought resulting in the Accused stabbing the deceased on the chest causing a fatal injury to the deceased.

8. The report stated that the local community stated that the Accused had no criminal record and they did not object to the Accused serving a non-custodial sentence and that his security could be guaranteed if he was released on a non-custodial sentence.

9. The Probation Officer recommended that the Accused was suitable for a non-custodial sentence.

Victim Impact Statement.

10. The victim's family were aggrieved by the deceased's death but had since come to terms with the loss. That the Accused's family had sought forgiveness and after a meeting with the clan elders, an amicable solution was reached. The victim's family forgave the Accused and demanded the

necessary customary rites to be conducted. They further stated that they had no objection to the Accused being handed a non-custodial sentence.

Accused's Mitigation

11. The Accused filed his written submissions on mitigation on 16th December 2025. He submitted that he had saved the court's time by freely admitting his role in the crime. That he had fully co-operated with the investigators and that he had showed genuine remorse.

12. It was the Accused's submission that they were a close-knit family and that his family had forgiven him and communicated the same to the state. That family reconciliation was a relevant mitigating factor in manslaughter cases. He relied on **Republic vs Robert Ndungu Nderitu (2021) eKLR**, **Republic vs Samuel Kenini Keiwua (2020) eKLR et.al.**

13. The Accused submitted that he was a first offender, a productive member of the community and was devastated by the loss of his brother (deceased). That he had already suffered immense psychological punishment and will continue bearing the emotional burden of causing his brother's death.

14. On the other hand, the Prosecution submitted that the death of the deceased could have been avoided and that the Accused's actions indicated an overreaction. The Prosecution submitted that there had been no evidence that the Accused had made amends with the deceased's family. They proposed an award of a 30-year prison sentence for the Accused.

15. Sentencing serves multiple purposes as enumerated in the **Sentencing Policy Guidelines 2023** which outline the objectives of sentencing at paragraph 1.3.1 as follows: -

Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other- in so far as possible, sentences imposed should be geared towards meeting the objectives in totality.

- i. Retribution.**
- ii. Deterrence.**
- iii. Rehabilitation.**
- iv. Restorative justice.**
- v. Community Protection.**
- vi. Denunciation.**
- vii. Reconciliation.**
- viii. Reintegration.**

16. The penal section for the offence of manslaughter is contained in **section 205 of the Penal Code** which provides: -

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

17.I have considered the circumstances of the case, the pre-sentence report and the Accused's mitigation that he was remorseful and regretted the event. The Accused and the victim's family advocated for a non-custodial sentence.

18.The **Sentencing Policy Guidelines 2023** at paragraph 2.3.15 lists the factors that a court should consider when deciding to impose a custodial or non-custodial sentence. They are as follows: -

- i) Gravity of the offence: In the absence of aggravating circumstances, or any other circumstance that renders a non-custodial sentence unsuitable, a sentence of imprisonment should be avoided with respect to sentences that**

have been adjudged as deserving less than three (3) years.

- ii) **Criminal history of the offender:** Taking into account the seriousness of the offence, first offenders should be considered for non-custodial sentences except where the seriousness of the offence crosses the custody threshold (where the offence is so serious that neither a fine or community sentence can be justified).
- iii) **Children in conflict with the law:** Generally speaking, non-custodial orders should be imposed as a matter of course in the case of children in conflict with the law. The exception to this is in circumstances where in light of the seriousness of the offence, coupled with other factors, the court is satisfied that a custodial order is the most appropriate and would be in the child's best interest. Custodial orders should only be meted out as a measure of last resort and in accordance

with the guidance provided under section 239 of the Children's Act, 2022. The court shall also issue post-committal supervision orders upon completion of the committal orders or the attainment of the age of majority where it is appropriate to so do in light of the nature of the offence and circumstances of the offender.

- iv) Conduct of the offender: Non-custodial sentences are best suited for offenders who are already remorseful and receptive to rehabilitative measures.**
- v) Protection of the community: Where there is evidence that the offender is likely to pose a threat to the community, a custodial sentence may be more appropriate. The probation officer's reports should inform the court of the risk posed by the offender to the community in order to inform sentencing.**

vi) Offender's responsibility to third parties: Where committing an offender to a custodial sentence is likely to unduly prejudice others, particularly vulnerable persons who depend on them, a court should consider if, in light of the nature and seriousness of the offence, the objectives of sentencing can be met with a non-custodial sentence. The court should enquire into the offender's personal circumstances and, where appropriate, seek the assistance of a pre-sentence report.

19. In the final analysis, it is my finding that this was not a suitable case for grant of a non-custodial sentence. A life was lost and the circumstances under which the victim lost his life were avoidable. In my view, the Accused must serve a custodial sentence. In the end, the Accused is sentenced to serve 5 years. The sentence to run from the date of plea on 20th January, 2025. 14 days right of appeal.

**Judgement and Sentence delivered, dated and signed at
Bomet this 25th day of February, 2026.**

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**HON. JULIUS K. NG'ARNG'AR
JUDGE**

Judgement delivered in the presence of:

Siele/Susan (Court Assistants)

Ms Ayekha for the State

Accused:

Ondieki for the accused

Kiprop Probation Officer

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