

11REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE NO. E017 OF 2025

REPUBLIC DPP

=VERSUS=

VINCENT NGOSOSEI KIPRONO ACCUSED

Coram: Before Justice R. Nyakundi

Ms Kirenge for State

Mr. Oduor Advocate

RULING ON SENTENCE

1. The convict initially was charged with offence of murder contrary to Section 203 of the Penal Code as punishable with death under Section 204 of the Penal Code. However, the defence entered into a Plea-Bargaining Agreement with the State which culminated into the reduction of the offence leading to a substitution of the charge and information under Section 202 of the Penal Code which deals with manslaughter punishable under Section 205 of the Penal Code. The plea facts are that Vincent Kiprono on the 5th day of October 2024 at Elgon View Estate at Kesses Sub-County jointly with others not before court unlawfully killed Samson Kandie. The plea agreement entered with the State is in consonant with Section 137 (A - O) of the Criminal Procedure Code. From the record the convict pleaded guilty to the elements of the offence and subsequently both the State and the defence were invited to submit on aggravating factors and mitigation for purpose of sentence.

2. As a matter of reflection, the factual matrix in support of the plea agreement are as tabulated in the instrument itself and for purposes of sentencing a recap of it is necessary.

PART 3: FACTS

Had this case gone to full trial, the State would have presented evidence sufficient to prove the facts below: The Accused Person, being a business man who sells shoes and clothes within the city of Eldoret was introduced to one Rose Chepkemboi Rotich sometime in June 2024 by one Sheila Malakwen. Sheila Malakwen is known to the Accused Person as they hail from the same village which is near Burnt Forest. Aside from being long time friends Sheila was also a customer of the Accused Person. The Accused and Rose met at least twice, once near Telkom where Sheila works and where they had a conversation in which Rose had expressed that she was miserable in her marriage as she suspected her husband of cheating and that she had wanted someone to help her discipline the husband. This it turns out was the reason for their introduction. The 2nd time the Accused and Rose met within the same month, they made the decision to discipline the Deceased. The Accused and Rose exchanged numbers and communicated often via his Telkom number 0778 047 157, duly registered in his name and via the number that Rose was using at the time which was 0773 777 963 registered under the name of one Cynthia Rotich Boinett. (The phone logs between the 2 are herein produced as exhibits 1 and 2). It was established in evidence that Cynthia Rotich Boinett is a sister to Rose and that Rose had been using this number for about 3 years. On the material date of 3/10/2024 the Accused and Rose were in communication, i.e they called each other 22 times between 1.56PM to 10.05PM in the night. Using his phone location and call log documentation, the Accused is seen to be in Elgon View estate, at the location of the Deceased's home, at all times

between 7.00PM and 9.00PM that evening. The Deceased was found by his wife and his daughter in the compound at around 9.45PM having been assaulted and left for dead. He was thereafter taken to hospital where he was pronounced dead thereafter. The circumstantial evidence shows that the Accused was hired to assault/discipline the Deceased which subsequent assault led to the Deceased's death.

PART 4: AGREEMENT TO COOPERATE

The Accused person agrees to provide entirely truthful, complete and accurate information and agrees to cooperate fully with the state. This cooperation shall include but not limited to the following; To truthfully and completely disclose all information to his involvement in the instant case including capturing the same in a fresh witness statement that will be recorded by the Investigating Officer An agreement to testify as a Prosecution Witness disclosing the above information in the matter against Rose Chepkemboi Rotich in Eldoret HCCR No E022/2024.

PART 5: RESTITUTION & COMPENSATION

There has been no compensation to the Victim's family, however, they have been privy to these proceedings and are agreeable to the terms and conditions as set out herein.

PART 7: SENTENCE IS WITHIN SOLE DISCRETION OF THE JUDGE

The Accused person understands that the sentence is within the sole discretion of the Presiding Judge. The Prosecution shall make submissions based on 4 section 329 of the Criminal Procedure Code and rule 13 of the ODPP Rules on Plea Agreements and propose a sentence of IMPRISONMENT FOR A TERM OF NOT MORE THAN 12 YEARS. On their part, the Defence shall be proposing a sentence of IMPRISONMENT FOR A TERM OF NOT MORE THAN 8 YEARS.

3. In this respect Learned Counsel Mr. Oduor filed written submissions on mitigation relying on the dicta of Francis Muruatetu & Anor vs The Republic [2017] in which it was said that:

“We are of the view that mitigation is an important congruent element of fair trial. The fact that mitigation is not expressly mentioned as a right in the Constitution does not deprive it of the necessity and essence in the fair trial process. In any case, the right pertaining to fair trial of an accused pursuant to Article 50(2) of the Constitution are not exhaustive”

We now lay to rest the quagmire that has plagued the Court with regard to the mandatory nature of Section 204 of the Penal code. We do thus by determining that any court dealing with the offence of murder is allowed to exercise judicial discretion by considering any mitigating factors in sentencing an accused person charged with and found guilty of that offence. To do otherwise will render a trial with the resulting sentence under Section 204 of the Penal Code unfair thereby conflicting with Articles 25©, 28, 48 and 50(1) and (2) (g) of the Constitution”.

4. It was Learned Counsel’s contention that as a whole the Sentencing Policy Guidelines 2023 should be pivotal in considering a lenient sentence in favor of the convict. He went further to urge the Court to factor in the following elements to give weight to the mitigation parameters in making the final decision as to the appropriate sentence to be imposed for the offence:

- Age of the offender

It was learned Counsel’s contention that the convict was at time of committing the offence aged 26 years bringing him into the bracket of young adults. For this reason Learned Counsel urged this Court to look at the convict as one who could be rehabilitated and be an asset to the country.

- **Being a first offender**

In this respect learned Counsel submitted that the convict before court is a first offender and nor record exists that he has ever committed any such serious offence or even misdemeanors. That therefore the Learned Counsel is a positive factor which should influence the decision making on the appropriate verdict to be imposed.

- **Whether the convict plea of guilty counts for something**

According to Learned Counsel for the convict the plea-bargaining agreement which is equivalent to a plea of guilty is a symbol of remorse and regret for the acts of omission which resulted in the death of the deceased.

- **Character and record of the convict**

Learned Counsel further submitted that the offender/convict is a loving, caring and God-fearing person. He further went on to submit that the convict is of good character which is a clear demonstration that if released there is no likelihood or risk of reoffending. There is therefore an opportunity for this Court to look at the remorsefulness of the offender with a high possibility of reform and social rehabilitation within the community. Learned Counsel therefore proposed that a consideration of non-custodial sentence will go a long way in transforming and rehabilitating the convict/offender.

5. First and foremost, this discussion cannot be sustained without laying down the aims and principles as incorporated in the Sentencing Policy of The Judiciary Guidelines 2023 which provides inter alia as follows:

- **Proportionality:** The sentence meted out must be proportionate to the offending behavior meaning it must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behavior is weighted in view of the actual, foreseeable, and intended impact of the offence as well as the responsibility of the offender.

- **Equality/Uniformity/Parity/Consistency/Impartiality:**The same sentences should be imposed for same offences committed by offenders in similar circumstances.
- **Accountability and Transparency:** The reasoning behind the determination of sentence should be clearly set out and in accordance with the law and the sentencing principles laid out in these guidelines.
- **Inclusiveness:** Both the offender and the victim should participate in and inform the sentencing process.
- **Totality of the Sentence:** The sentence passed for offenders convicted for multiple counts must be just and proportionate, taking into account the offending behavior as a whole.
- **Retribution:** To punish the offender for their criminal conduct in a just manner.
- **Deterrence:** To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.
- **Rehabilitation:** To enable the offender to reform from his/her criminal disposition and become a law-abiding person.
- **Restorative justice:** To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs.
- **Community protection:** To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.
- **Denunciation:** To clearly communicate the community's condemnation of the criminal conduct.
- **Reconciliation:** To mend the relationship between the offender, the victim and the community.

- **Reintegration:** To facilitate the re-entry of the offender into the society.
6. The significant observation is that the schedule of aims and principles presents a sentencing Judge with considerable difficulties in his or her quest to merge the penalty to the infinitely viable circumstance of the crime. However, it is within the context of these principles a trial Court must identify some flexibility in applying the starting point prescribed on punishment for manslaughter under Section 205 of the Penal Code set out by the Legislature as life imprisonment. The other starting point in cases of this nature should first and foremost establish on how to weigh the various aspects of aggravating and mitigation factors which may result in a minimum term of any length in the making of the entire decision or proceed to impose the maximum of life sentence. That starting point to me must not be used mechanistically so as to produce in effect an unfair, disproportionate, punitive and harsh sentence occasioning prejudice or injustice to the offender/convict. Full regard must be heard to the features of the individual case so that the sentence truly reflects the seriousness of the particular case.
 7. There is no dispute that the killing of another human being without any justification or excuse is a violation of Article 26 of the Constitution on the right to life. Murder whichever description we give it either under Section 202 or the higher definition under Section 203 of the Penal Code it is life lost without an Act of God but the unlawful hands of another human being. Murder is a very serious offence. Society at large and the relatives of the deceased are entitled to expect that the murderer whether the facts of the case are within the manifestation of Section 202 or 204 of the Penal Code that the murderer will serve a stiff sentence befitting the seriousness of the crime and the blameworthiness of the perpetrator. In the early beginning of the centuries there was Hammurabi's Legal Code which plainly allowed that in every crime of murder human life is lost the sanction to be

pronounced against the convict or offender after the trial on the merits or summary proceedings upon plea of guilty must always be an imposition of death sentence.

8. This Hammurabi code has since gone through transformation that sentencing of offenders/convicts is now in the hands of trial Judges and Magistrates who apply discretionary sentencing principles in both serious and non-serious offences. That is the very reason why the Supreme Court of Kenya in the **Muruatetu Case** pointed out that there is incompatibility of the mandatory death penalty for the offence of murder with fundamental rights as well established in the common law world and our own Constitutional Order 2010. In some other jurisdictions the mandatory death penalty was also found to be incompatible with the right to life. That is the very reason why the Supreme Court looked at the right to a fair trial under Article 50 and access to justice in Article 48 of the Constitution when it comes to navigating the landscape on sentencing of offenders and convicts.
9. On the other hand, the offence of manslaughter under Section 205 attracts a penalty of life imprisonment. Previously under the Sexual Offences Act regime there has been constitutional challenges to the mandatory life imprisonment hence Courts are now confronted with a discretion over sentence within the provisions of Sections 8(1) as read with 8 (2) of the Operative Act. However, it is not lost that the Supreme Court in the **Mangeso Kitsao** case that discretion in life sentence for defilement of a child 11 years is now ringfenced in the sense that there is a structural interdict to trial courts and other forums exercising Appellant Jurisdiction not to exercise discretion which gives way to an imposition of a lesser sentence than the one prescribed by parliament. Notwithstanding this position in so far as the provisions of Section 205 of the Penal Code is concerned, life imprisonment is not mandatory therefore it is legally toned with Judicial discretion underpinned in the unique circumstances of each case. What is the challenge? It is the

difficult encountered across the country regarding sentence disparity for similar facts frequently hinge in the tension between individualized sentencing that is treating each offender based on their unique mitigation and uniformity ensuring similar crimes receive similar punishment.

10. It is therefore open to the Judiciary and the Legislature to lay down rules by which they wish the country should be governed and bound by in the scheme of sentencing given wider disparity experienced in sentencing offenders/convicts whose facts are proven beyond reasonable doubt within the dictates of the law as provided for under Section 205 of the Penal Code. Yes, I accept there is discretion donated to the trial Courts, including the Appeals Courts but one must recognize that the right to life under Article 26 of our Constitution is a duty of every Kenyan and no rarest of the circumstances should indeed occasion the death of another unless the very few exceptions already taken care of by the law.
11. One of the fundamental principles of the legal systems, like the one domesticated in this country and a central theme in legal philosophy is Justice which must not only be done but be seen to be done to the larger constituency occupying the Republic and to a lesser extent in offences of this nature like murder the victims who have lost the loved one prematurely through crime. While there are many interpretation of what it means for a system to be just it is uncontroversial to say that a system cannot be just if similar offenders or convict receive significantly different sentences for compatible crimes. What is the hard hurdle to be by passed by the trial courts in Kenya within the regime of the Criminal Justice System?. It is how to nuance the principle of equality before the law and non-discrimination under Article 27 of the constitution particularly in the context of the criminal procedure, aims to achieve equal treatment and is therefore closely tied to the concept of justice. Maybe it is time the crime research

Centre on crime examines sentencing disparities as a way of assessing whether the Kenyan Legal System serve us from a unique Judgements where predominantly inconsistency and disparity is the order of the day and no reasons are attached to it to the common reader in the streets of our cities and urban centers. What would be the answer to this research question? Is to identify the basis of the disparities and inconsistencies in sentencing so that various measures can be taken by the actors in Justice System to correct them so as to promote greater consistency in adjudication of sentences. In my view, one of the singular effort is to introduce the bandwidth of a range of cluster of sentences more particularly in serious offences like murder and manslaughter a period in which each of the convicted offender must serve before he can be eligible for review of sentence or on the other hand the prerogative writ of mercy under Article 133 of the Constitution.

12. Am alive to the fact that this country has a rich developed jurisprudence on sentencing. However, notwithstanding that legal position, the sentencing standard already in place are yet to produce what one can describe as uniformity, consistency, proportionate and fair terminable sentences compatible with the letter and spirit of the statutory frameworks laid down in the various Statutes. Concerns remain out there in the public domain in which they critique Judges sentencing decisions some of which are so liberal and expansive construction to mitigating factors but not to aggravating factors. There is need for a more nuanced approach to justify even certain exemptions made by Courts while sentencing offenders/convicts who plead guilty within the legal provisions of Section 137(A-O) of the Criminal Procedure Code legally styled as Plea Bargaining Agreement. If one conducts an evaluation the brutality of the offence is never a major factor in exercising discretion in this category of cases. The culprits who have been culpable get away with lenient sentences. This

offence of manslaughter notwithstanding the plea of guilty some of the facts of the offence are of an exceptionally depraved, and heinous character and constitutes on account of its design and the manner of its execution a source of grave danger to the society at large that the Court must be alive to the right to life protected and guaranteed by the Constitution as prescribed in Article 26.

13. In the case before Court some attention must be drawn to the sensibilities of the particular society and community in which the offence was committed by the offender/convict. The circumstances of this case must be measured against the aggravating and mitigating factors. The materials presented by the defence in the form of mitigation has been weighted with the victim impact statement and the drawdown of aggravating factors and this Court cannot allow itself to be diverted from its duty of defending this Constitution by making choices that will find favor with the family and the public at large for this heinous crime. This offence was not accidental, it was planned and meticulously executed and committed in furtherance of a common purpose. Sentencing Guidelines of the Judiciary 2023 and Section 205 of the Penal Code which provides for the penalty of life imprisonment for those found guilty and convicted of manslaughter is merely a starting point for the sentencing process.

14. This means the Court must also focus exclusively on the circumstances of the offence, the offender, the mitigating factors and how they sit in consonance with aggravating factors of the offence. This broad approach is of fundamental importance in exercising discretion against the offender/convict in whom I find no extenuating circumstances to concur with the Learned Counsel for the defence to impose a non-custodial sentence. Whereas I appreciate the Plea-Bargaining Agreement protocols cumulatively as I have said elsewhere there are no mitigating circumstances sufficiently substantial to call for leniency. It is for the offender/convict to prove the existence of

mitigating features but they must do so by a preponderance of the evidence which is a lower standard of proof akin to the balance of probabilities. The breadth of this analysis I exercise discretion to impose a custodial sentence of fifteen (15) years with a rider that the offender/convict be at liberty to test this before the Court of Appeal. To Vincent by dint of Article 26 of the constitution the sting of death is avoidable. Therefore, in practice the statutory language of appeal is 14 days from today's ruling.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 3RD DAY OF
MARCH, 2026.**

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**R. NYAKUNDI
JUDGE**