

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL CASE NO. 6 OF 2020

REPUBLIC.....

.....PROSECUTION

VERSUS

BERNARD CHERUIYOT KORIRACCUSED

JUDGEMENT AND SENTENCE.

1. The Accused, Bernard Cheruiyot Korir 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 21st March 2020 at Kabolwo Village in Chepalungu Sub-County within Bomet County he murdered Josiah Kipkorir.

2. The Accused took plea on 16th June 2020 where he pleaded not guilty to the charge of murder.
3. A Plea-Bargaining Agreement was filed on 19th November 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 19th November 2025, the Accused took plea for the offence of manslaughter. The charge and every element thereof were 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 20th March 2020 at about 10 p.m., the Accused was passing near the home of his brother Simion Korir. He saw Josiah Langat Arap Matiaya (deceased) with his brother’s wife (Caren Korir) having sex in a nearby bush. The Accused took out a bow and arrow and shot at the deceased and went back to sleep in his house.

On 21st March 2020 at 0700hrs, screams were heard from the road. The deceased was found lying dead with an arrow stuck from his back. The body was moved to Longisa Mortuary for preservation. The post mortem was conducted on 25.3.2020 and it revealed that the deceased died from hemothorax secondary to assault leading to cardiopulmonary arrest.”

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 23rd February 2026 and it indicated that the Accused shot the deceased after finding him having sexual intercourse with the brother's wife.
8. The report stated that the Accused was well known in the community as a diligent and principled individual. That the community fully embraced reconciliation between the two families and supported the Accused's plea for leniency.
9. The Probation Officer recommended a non-custodial sentence of probation for three months.

Victim Impact Statement.

10. The victim's family stated that they had come to terms with the demise of the deceased and had found a measure of

healing. That the circumstances surrounding the commission of the offence were not premeditated and that the family held divergent views on whether the Accused should be granted a non-custodial sentence or not. The victim's family were also divided on the forgiving the Accused.

11. The victim's family stated that they had been approached by the Accused's family for reconciliation and all customary rites had been observed including compensation.

Accused's Mitigation

12. The Accused filed his written submissions on mitigation on 19th February 2026. He submitted that he had a one-year-old daughter and that the court should consider the best interest of the child while sentencing him. That he was a first offender and that the circumstances leading to the commission of the offence were very provocative. He further submitted that he was remorseful.

13. It was the Accused's submission that the families had performed the traditional cleansing rites and it reflected forgiveness. That the court consider the time he has spent in remand (2 years). He prayed for a non-custodial sentence.

14. On the other hand, the Prosecution submitted that circumstances leading to the deceased's death were aggravating and that the Accused ought to be punished justly. The Prosecution prayed for a proportionate and just sentence.

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, the Prosecution's submissions and the Accused's mitigation that he was remorseful and regretted the event. The Accused and Probation Officer 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 there can be no justification for such a loss. In my view, the Accused must serve a custodial sentence. In the end, the Accused is sentenced to serve 7 years imprisonment. The sentence to run from the date of plea taking on 24th March, 2020. 14 days right of appeal.

Judgement and Sentence delivered, dated and signed at Bomet this 26th 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)

Mr Magoma for the State

Accused:

Kiprop (Probation Officer)

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