Republic v Y alias P (Criminal Case E020 of 2024)
[2026] KEHC 4113 (KLR) (30 March 2026) (Sentence)

Neutral citation: [2026] KEHC 4113 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ITEN

CRIMINAL CASE E020 OF 2024

JRA WANANDA, J

MARCH 30, 2026

BETWEEN

REPUBLIC ..... PROSECUTION

AND

VKY ALIAS P ..... ACCUSED

SENTENCE

1. The accused person, a male then estimated to be about 17 years old boy according to the Age Assessment Report dated 10/01/2025 on record, was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars were that on 27/10/2024, at Lawich village, Sisiya Sub-County, Kipsaiya Location in Marakwet West Sub-County, within Elgeyo Marakwet County, he caused the death of one Cheboi Kipkore, his own grandfather, an old man estimated to be about 70 years old, according to the post-mortem Report produced in Court.

2. Since the accused is now presumed to be above 18 years old, and thus no longer a juvenile, I may restate that a person who commits an offence as a juvenile but has become an adult at the date of sentencing, such sentencing is supposed to be based on the offender's age at the time of the crime. As such, the Court is required to put more emphasis on rehabilitation, rather than rushing to impose a custodial sentence.

3. Back to this case, Ms. D. Moronge represents the accused as the Pro Bono Advocate, while Ms Racheal Mwangi is the Prosecution Counsel currently appearing for the State.

4. The accused took plea on 7/11/2024 before Ominde J, and pleaded not guilty. The parties however subsequently entered into plea bargain discussions which eventually culminated to the plea bargain Agreement dated 5/11/2025, which indicated that the accused had agreed to plead guilty to the lesser charge of manslaughter, and to let the Court then determine the sentence.

5. The matter then came up for plea bargain hearing on 6/11/2025. The accused was sworn on oath, and after examining him, I recorded my satisfaction that Section 137F-137G of the Criminal Procedure Act, governing the plea bargain process had been complied with, that the accused had signed the agreement together with his Counsel, voluntarily, and without any coercion, and that he fully understood the effect thereof. I thus allowed the accused to take a fresh plea, now on the fresh charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code, which he did, and upon which he then pleaded guilty. The statement of facts of the case (factual basis) was then read out to the accused. The same was basically as follows:

> "The accused was the grandson of the deceased and the two were living together. On 27/10/2024, the accused was seen by a neighbour heading to their residence at 1730 hours after grazing cattle. The next day at 1430 hours, the accused told a cousin that the deceased had died due to a chest problem, and the accused then disappeared. The deceased was later found in his home dead covered with a blanket, with a deep cut on the left side of the neck, and there was also blood splashed on the walls. The police were informed and visited the scene where they discovered that the clothes on the body of the deceased had been changed, and also discovered blood-stained clothes. The body was then taken to the mortuary, where a Post-mortem was conducted on 4/11/2024, which established the cause of death as being haemorrhage due to a cut wound, and two days later, the accused surrendered himself at the Kapsowar Police Station where he confessed to killing the deceased using an axe. The Investigating Officer then revisited the scene and recovered the axe which the accused had confessed using to kill the deceased."

6. Prosecution Counsel then produced the Post-Mortem Report dated 4/11/2024, and also the axe as exhibits.

7. When asked to confirm or refute or comment on the correctness of the facts as read out, the accused confirmed the same as being correct and true. Satisfied that the statement of facts read out disclosed sufficient factual basis for the charge, this Court accordingly convicted the accused on the offence of manslaughter on his own plea of guilty.

8. Regarding the sentence to be meted out, Ms. Mwangi informed the Court that there were no previous criminal records relating to the accused hence he could be treated as a first offender.

9. On her part, Ms. Moronge, in mitigating for the accused, submitted that the Age Assessment Report had confirmed that the accused is a minor, and stated that the accused is very remorseful. She submitted further that the deceased was the only relative of the accused, that the accused is an orphan as his mother abandoned him, and he had dropped out of school in class 7. She reiterated that the accused was still a minor at the time of the offence, which he still is, and also urged that the offence occurred due to some frustrations of his living with the deceased. She then prayed for a lenient sentence.

10. I then directed that a pre-sentence Report be prepared and filed, which was done. The Report, dated 15/1//2026 and prepared by the Probation & Aftercare Service (Elgeyo Marakwet County Office) indicated that it had been compiled after interviews with, inter alia, the accused, the family and relatives, neighbours and the local administration.

Determination

11. The applicable law on sentence for the offence of manslaughter is Section 205 of the Penal Code which provides as follows:

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

12. I note that under the plea bargain Agreement, the Prosecution recommends a prison sentence of 20 years, while the defence recommends a non-custodial sentence. Neither Counsel however bothered to address the Court on the recommended mode of sentencing in a case as this one, where the accused, when he committed the offence, was still a juvenile, but has now, at the date of sentencing, attained the age of adulthood.

13. Nonetheless, regarding sentencing of juveniles, Section 238 of the Children's Act 2022 provides that:

    (1) No court shall order the imprisonment of a child.

    (2) Notwithstanding the nature of any offence punishable by death, no court shall impose the death penalty on a child on a finding of guilty for such an offence.

    (3) A Children's Court shall not make any order to send a child under the age of twelve years to a rehabilitation school.

    (4) The performance of community service under an order of the Court shall be in accordance with the *Community Service Orders Act* (Cap. 93).

14. Section 239 (formerly Section 191) then provides the options recommended for dealing with children in conflict with the law as follows:

> " (1) Where a child is tried for an offence, and the Court is satisfied as to their guilt, the Court may deal with the case in one or more of the following ways—
>
> (a) discharge the child under section 35(1) of the Penal Code (Cap. 63);
>
> (b) discharge the child on his or her entering into a recognisance, with or without sureties;
>
> (c) make a probation order against the offender under the provisions of the *Probation of Offenders Act*;
>
> (d) commit the offender to the care of a fit person, whether a relative or not, or a charitable children's institution willing to undertake the care of the offender;
>
> (e) if the child is between twelve years and fifteen years of age, order that the child be sent to a rehabilitation institution suitable to the child's needs and circumstances;
>
> (f) order the child to pay a fine, compensation or costs, or any or all of them, having regard to the means of the child's parents or guardian;
>
> (g) in the case of a child who has attained the age of sixteen years, deal with the child in accordance with the *Borstal Institutions Act*;

(h) place the child under the care of a qualified counsellor or psychologist;

(i) order that the child be placed in an educational institution or vocational training programme;

(j) order that the child be placed in a probation hostel under the provisions of the *Probation of Offenders Act*;

(k) make a community service order;

(l) make a restorative justice order;

(m) make a supervision order;

(n) make any other orders of diversion provided for in this Part; or

(o) deal with the child in any other lawful manner as may be provided under any written law.

15. As already stated, this is a case of the offender being a minor at the time of commission of the offence and transiting to the age of majority at the time of sentencing. In respect to this situation, the Court of Appeal, in the case of JKK v Republic [2013] KECA 241 (KLR) held as follows:

> " 18. The dilemma we face in this appeal was the ascertainment of the age of the appellant. Going by the remarks by the Judge, he was about 17 years when he was first arraigned in court in March, 2009, it is now four years later, which means he is now over the age of 18 years, therefore, he is not suitable to be subjected to any of the sentences provided for under the *Children Act*. The purposes of the sentences provided for under the *Children Act* are meant to correct and rehabilitate a young offender, ie any person below the age of 18 years while taking into account the overarching objective is the preservation of the life of the child and his best interest. A death sentence or a life imprisonment are not provided for but when dealing with an offender who has attained the age of 16 years, the court can sentence him in any other lawful manner. The offence committed by the appellant is very serious, an innocent life was lost, the appellant though probably a minor when he committed the offence must serve a custodial sentence so that he can be brought to bear the weight and responsibility of his omission or lack of judgment, by serving a custodial sentence. We are of the view that the appellant who is now of the age of majority cannot be released to the society before he is helped to understand the consequences of his mistakes, which can only happen after serving a custodial sentence.
>
> 19. For the aforesaid reasons we are inclined to interfere with the death sentence imposed by the trial court and substitute it with imprisonment for a period of 12 years. We allow the appeal to the extent that the death sentence is substituted with twelve years. To that extent the appeal partially succeeds on sentence but the appeal on conviction is dismissed.

16. The Court of Appeal reiterated the above position in the subsequent case of Dennis Cheruiyot [2014] eKLR, in which it held as follows:

> " Whatever the case, life imprisonment is not provided for under the *Children Act*, but when dealing with an offender who has attained the age of 16 years, the court can sentence him in any other lawful manner. We think that due to the gravity of the offence, and the current age of the appellant, he cannot be released to the society without being brought to terms with the consequences of his action or omissions by a custodial sentence. It is for this reason that we are inclined to allow the appeal against the life sentence imposed by the trial court and substitute it with imprisonment for a period of 10 years from the date of conviction. We therefore allow the appeal to the extent that the life sentence imposed on the appellant is substituted with ten years imprisonment."

17. Prof. J. Ngugi J (as he then was), in the subsequent High Court case of DLK v State [2018] KEHC 6153 (KLR), in following the two Court of Appeal decisions above, held as follows:

> " 10. By relying on section 191(1)(l) of the Children's Act to fashion an appropriate sentence for the child offender in both cases, the Court of Appeal is drawing attention to the lacuna in our law regarding juvenile justice. Our statutory scheme envisages only two types of offenders: child offenders – those who are under eighteen years old – and adult offenders – those who have attained eighteen years of age. The statutory scheme does not, in any nuanced manner, distinguish the different developmental stages of children – especially those in teenage years who are, typically, both in need of care and protection but can be dangerous to the society due to their deviant behaviour. The statutory scheme stipulates that a child above sixteen years old can only be held in a borstal institution for a period not exceeding three years.
>
> 11. This often creates a dilemma for trial courts which may be faced with a juvenile who is only slightly below eighteen years old but who committed a serious offence such as (depraved heart) murder or rape or particularly vicious armed robbery. Since the statutory scheme provides that such a child cannot be sent to prison and since the law further provides that such a child can only be sent to a borstal institution for no more than three years, the options are limited to trial courts even where on analysis and evidence such a court might be persuaded that the almost-adult it is dealing with is a danger to society; and has failed to acknowledge or come to terms with his or her errors.
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> 12. A similar dilemma is created when the offender has already turned eighteen at the time of conviction or at the time of appeal as is the case here. Where the offence committed was a particularly vicious or serious one, the option of releasing such an offender back to the society is not an attractive one. It may even be downright dangerous for the society. Further, it might deny the individual offender a true opportunity to reflect on his actions in a custodial setting and take the rehabilitative turn.
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> 13. While these dilemmas call for a reform to our juvenile justice system to provide a more nuanced statutory scheme, I am persuaded, in following the Court of Appeal in the Dennis Cheruiyot case and the JKK case, that when faced with the situation such as the one we have in this case, the solution lies in

section 191(1)(l) of the Children's Act: to deal with the offender in question in any other lawful manner. In this case, I have followed these two precedents regarding the right approach to sentencing is such cases. .....

.....

14. In the face of all these factors, I am persuaded that the petitioner should be sentenced to twelve years imprisonment for each of the two counts of robbery with violence. ....."

18. The Court of Appeal, in its recent decision in the case of Kiti v Republic [2023] KECA 1403 (KLR), while setting aside a sentence that the offender be detained at the President's pleasure, yet again, reiterated the above position in the following manner:

> " 25. It is desirable that a message be sounded out that children who commit serious crimes, and transit into adulthood at time of conviction, cannot walk home scot-free; and whereas, it is indeed in their best interest that they must not be treated like adults; yet in the absence of a penalty commensurate with the objectives in meting out a sentence, then the measure of last resort contemplated in Article 53 (2) of *the Constitution* must become applicable.
>
> 26. From the foregoing, having set aside the unconstitutional sentence which was meted; and taking into consideration the period that he has been incarcerated, we substitute it with a prison term of 10 years, which shall run from the date that he was arrested in October 2015, and which translates to the term served."

19. It is therefore clear that although in all the said decisions, the respective Courts were alive to the provision that "no court shall impose the death penalty on a child on a finding of guilty for such an offence", all the Courts, noting that the offenders had since transitioned to adulthood as at the date of sentence, nonetheless, invoked their powers to "deal with the child in any other lawful manner as may be provided under any written law", and imposed prison sentences.

20. In view of the above, in determining the appropriate sentence to impose, I take into account the Supreme Court decision in the the case of Francis Karioko Muruatetu & Another v Republic [2017] eKLR) in which it guided that, in sentencing, the following mitigating factors would be applicable; (a) age of the offender; (b) being a first offender; (c) whether the offender pleaded guilty; (d) character and record of the offender; (e) commission of the offence in response to gender-based violence; (f) remorsefulness of the offender; (g) the possibility of reform and social re-adaptation of the offender; and, (h) any other factor that the Court considers relevant.

21. Similarly, the Court of Appeal, in the case of Daniel Kipkosgei Letting Vs. Republic [2021] eKLR, pronounced as follows;

> " With regard to the above, we observe that the purpose and objectives of sentencing as stated in the Judiciary Sentencing policy should be commensurate and proportionate to the crime committed and the manner in which it was committed. The sentencing should be one that meets the end of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to ....."

22. Further, Majanja J, in quoting Francis Karioko Muruatetu (supra), in the case of Michael Kathewa Laichena & another v Republic [2018] eKLR, stated as follows:

> "The Sentencing Policy Guidelines, 2016 ("the Guidelines") published by the Kenya Judiciary provide a four tier methodology for determination of a custodial sentence. The starting point is establishing the custodial sentence under the applicable statute. Second, consider the mitigating circumstances or circumstances that would lessen the term of the custodial sentence. Third, aggravating circumstances that will go to increase the sentence. Fourth, weigh both aggravating and mitigating circumstances. ....."

23. With the above guidelines in mind, I take into account the fact that the deceased was the accused person's grandfather. The motive of the killing did not come out during the reading of facts but according to the Pre-sentence Report, which may not however possess substantive weight, it is indicated that on the fateful day, the accused was sent to buy alcohol by the deceased and after bringing the alcohol, the two drunk together but in the course thereof, they differed and started exchanging words and insults. It is claimed that it is at the peak of that argument that the accused picked an axe and cut the accused on the neck resulting to heavy bleeding leading to the death. It is claimed that upon realizing what he had done, the accused cleaned the body and changed the clothing on the body, lay it on the bed and covered it with a blanket and escaped. From the facts read out, the accused is reported to have 2 days later surrendered himself to the police where he confessed to have hacked the deceased with the axe on the neck.

24. Taking the above narrative as reflecting the correct chain of events, it appears that the attack may not have been premeditated. It also appears to have been influenced by intoxication as the accused and the deceased are said to have been drinking alcohol together. I have also taken into account the fact that the accused has been described as a first offender. He also entered into the plea bargain agreement and thus pleaded guilty to the lesser charge of manslaughter, in the process, saving much judicial time. I have also considered the apparent remorse displayed by the accused.

25. I also take into account the age of the accused, as aforesaid, indicated to be about 17 years in 2024, which means that he is currently about 19-20 years old, still a young man. I have also noted his apparent desire to be allowed to get back into the society to rebuild his life. The Pre-sentence Report also describes the accused person's childhood as disturbed noting that his father is said to have died when the accused was still a toddler, upon which his mother abandoned him and remarried elsewhere. The accused is therefore said to have been brought by his grandfather, the same one he killed, but that he dropped out of school in class 4. It is alluded that this disturbed upbringing may have influenced the accused person's fall into bad-company, consumption of alcohol, and drug and/or substance abuse (bhang) when still young, and which circumstances may have also influenced his actions on the fateful day.

26. Further, according to the Pre-sentence Report, the local administration reported that the accused person had cordial relations with the deceased who, as aforesaid, was his guardian, and that they had lived together for a long time without any notable conflict, and that what resulted to the current predicament is a mystery to them.

27. I consider the above to be mitigating circumstances worthy of consideration for purposes of sentencing.

28. I however also consider the grave and disturbing manner in which the offence was committed, namely, the accused, whatever the motive of the attack, chose to viciously hack the deceased, his own grandfather, the same person who had brought him up since childhood after his father died and his mother abandoned him, with an axe on the neck. The accused's act of aiming at the neck of the deceased

was clearly intended to ensure that he fully deprived the deceased of his life. I say so because, needless to state, the neck area houses critical airway, vascular, and neurological structures within a compact space such that even seemingly minor injuries can lead to rapid deterioration or death. The accused, no doubt, intentionally executed a decisive, swift and aggressive attack on one of a human being's most vulnerable areas of the body. This cannot therefore be said to have been accidental. The deceased was killed in cold-blood and must have suffered a very painful death inflicted by a person he trusted, and whom he had selflessly brought up since childhood. A reading of the Post-mortem Report reveals that the attack must have been a vicious one as confirmed by the depth and/or extent of the neck wound inflicted on the deceased, which caused the deceased to bleed to death. As if that was not enough, the accused did not even bother to seek assistance to get the deceased medical attention or treatment.

29. The actions of the accused paint a picture of a heinous violent commission of the attack that ended the life of the deceased. The precision with which the attack was executed, and the manner in which the accused tried to conceal his action by misleading a neighbour by telling him that the deceased out of a heart attack, and also his act of changing the deceased's clothes, and even cleaning the axe he used in the killing, does not point to a person deprived of the ability to make proper or rational decisions.

30. I also consider that according to the Pre-sentence Report, the family of the accused, which is also that of the deceased, describe the incident as horrifying and feel that considering the manner in which it was orchestrated, must have been the act of an expert. They are said to doubt that the accused executed the attack while alone. It is also indicated that the deceased's other grandsons have vowed to avenge the death if the accused is released back to the community. They are therefore said to have proposed that the accused be confined by way of a custodial sentence. The local administration is also said to have got wind of threats against the accused, and the non-acceptance attitude expressed by family members, and as such, its members are also reported to have recommended incarceration to give room for healing.

31. In the circumstances, like the Judges in the cases cited above, I, too, find that a non-custodial sentence would not be appropriate in the circumstances of this case. A human life was lost and the Court must reiterate that it is not acceptable to take a human life extra-judicially, whatever the circumstances or level of provocation. Like the Judges in the above cases, I, too, am of the view that considering the gravity of the offence in this case, and the offender having now attained the age of majority, he cannot be released back to society without being brought to terms with the consequences of his actions. I will therefore impose a prison sentence but since I find no indication that the accused was at any point released on bond or bail since his arrest on or about 29/10/2024, the period that he will serve the prison sentence shall be mitigated as a result of consideration of the period he already served in remand custody.

Final Orders

32. In circumstances, I make orders as follows:

    i. I hereby sentence the accused, Victor Kiprop Yator Alias Paulo, to serve eight (8) years imprisonment.

    ii. As stipulated under Section 333(2) of the Criminal Procedure Act, the period already spent in remand custody by the accused before sentence shall be deducted in the computation of the period of imprisonment to be served. In other words, the period of serving the prison sentence shall be computed from the date that the accused was arrest, namely, 29/10/2024.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 30TH DAY OF MARCH 2026

.....

WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

Accused present physically in Court

Ms. Moronge for the accused person

Ms. Mwangi for the State

Court Assistant: Brian Kimathi