

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ITEN
CRIMINAL CASE NO. E011 OF 2023

REPUBLIC.....PROSECUTION

VERSUS

AMOS

KIPKEU

CHORGE M.....ACCUSED

RULING ON SENTENCE

1. Once in a while, a Judge or Judicial Officer comes across a criminal case involving a killing that is almost unforgivable and cannot at all be explained. Such cases leave one with the feeling that the human society has completely degenerated back into the savage reign which historians claim that we evolved from. and left behind millions of years ago. This is one such case.
2. The accused person, a male currently aged about 29 years old, 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 25/02/2021, at Rocho sub-Location, Marakwet East County, within Elgeyo Marakwet County, he murdered one **Meshack Kiprotich**, a baby boy aged 2 years by slashing him to death with a panga.
3. **Ms. Tarigo** has been appearing for 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 17/03/2021 before **S.M. Githinji J**, and pleaded not guilty. The parties however subsequently entered into plea bargain discussions which eventually culminated to the plea bargain Agreement dated 4/06/2025, which indicated that the accused had agreed to plead guilty to the lesser charge of manslaughter, and to let the Court determine the sentence.
5. The matter then came up for plea bargain hearing on 6/11/2025. The accused was sworn under 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 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 a neighbour to the deceased’s parents. The deceased MESHACK KIPROTICH was aged 2 years at the time of death. The brief facts of the case are that on 25th February 2021, the accused went to the home of one Charles Kipkemoi Komen and found his wife, Magarine Jemaiyo Kipkeu. She was washing utensils while the deceased was playing next to her. The accused asked Magarine where her husband was because he wanted to kill him for threatening his family while armed with a gun. Magarine informed the accused that she was not sure where he was, but pleaded with the accused not to kill her husband. The accused then drew a panga. Magarine ran away. As she was running, she saw the accused cutting the innocent child using the panga he was holding, multiple times on the head and his back. The child died on the spot. On seeing this, Magarine screamed for help and ran for her safety. She hid herself at her neighbour’s house, one Josephine, who locked her in the house and then proceeded to the murder scene. After a while, members of the public, accompanied by Josephine, went and took Magarine home and informed her that her child had died. The accused person, soon after committing the offence, then ran to the anti-stock theft camp at Chesongoch, where he surrendered himself to the police. Police from Mogil police station police station visited the scene and took the body of the deceased child to Tot Hospital Mortuary for preservation and later re-arrested the accused from the Chesongoch Anti-stock theft camp. A post-mortem was conducted on the body of the deceased on 1st March 2021, where the medical officer opined that the cause of Death was due to cardiopulmonary arrest secondary to massive haemorrhage occasioned by injury by a sharp object on the head and lower back of the Deceased. The accused person was later arraigned in court with the offence of Murder contrary to section 203 as read with section 204 of the Penal Code, which has now been reduced to Manslaughter contrary to section 202 as read with section 205 of the Penal Code pursuant to this agreement.”

6. Prosecution Counsel then produced the Panga referred to above, and also the Post Mortem Report dated 1/08/2021.
7. When asked to confirm or refute or comment on the correctness of the said 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 his part, **Mr. Tarigo**, Counsel for the accused, in mitigation on behalf of the accused, submitted that the accused is remorseful and reformed, and that he has also saved the Court's time. He thus prayed for a lenient sentence, and also pointed out that the accused has been in remand in custody since the time of arrest.
10. I then directed that a pre-sentence Report be prepared and filed, which was done. The Report, dated 23/01//2026 and prepared by the Probation & Aftercare Service (Elgeyo Marakwet County Office) indicated that it had been compiled after perusal of the Court and police file, and also after interviews with, *inter alia*, the accused, his family, the victim's relatives, local administration and neighbours.

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. 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.**
13. 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.”

14. 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.”

15. With the above guidelines in mind, I have considered the manner in which the offence was committed, the circumstances whereof are that the accused and the baby’s father (his neighbour) seemingly had some differences in respect to which the accused went to the baby’s father’s home while drunk, to confront him. He armed himself with a panga and the report is that he had gone to revenge because allegedly the baby’s father had earlier threatened the family of the accused with a gun. As stated above, the accused did not find the baby’s father at home, and it is when the baby’s mother told the accused that the father was not at home that the accused apparently got infuriated, unleashed the panga and moved to attack the baby’s mother with it. It is when the victim’s mother managed to escape that the accused is said to have, instead, transferred his anger towards the innocent baby who was playing nearby, and thus slashed him multiple times on the head and back, killing him instantly, on the spot.

16. I have also considered the contents, findings and recommendations of the Pre-sentence Report. The salient observations I make from the Report are that the accused, currently aged about 29 years old, has a history of alcohol use, and as aforesaid, he is said to have been drunk at the time of the incident, which incident he claims to regret, and is remorseful about, as evidenced by his entering into the plea bargain agreement. The accused is also said to claim that he never intended to kill the baby and blames alcohol for his action. The local administration is also said to have stated that the accused had always been a law-abiding citizen, and the accused is also said to be a 1st offender.

17. The above observations, coupled with the fact that accused entered into the plea bargain deal, thus saving precious judicial time, may be construed to amount to, mitigating factors which ought to have a bearing on the sentence to be imposed.
18. There are however obvious serious aggravating circumstances. For instance, the post mortem report paints a grim picture of a vicious, merciless and violent attack as indicated by the severe injuries inflicted upon the baby (deceased). The baby is reported to have suffered multiple extensive deep cuts on the right side of the face, including the mouth and nose, and his right earlobe was severed. The cause of death is then described as “***cardiopulmonary arrest, secondary to massive haemorrhage occasioned by injury by a sharp object on the head and lower back***”. One shudders to imagine that these extent of injuries were inflicted by a fully grown-up man, a neighbour, on a 2-year-old baby. By arming himself with a panga when going to the baby’s home to confront the baby’s father as an act of revenge, the accused obviously meant to inflict maximum harm. This was a most foul killing of an innocent 2-year-old baby who had nothing to do with the quarrel between his parents and the accused and he should never have been turned into sacrificial lamb by the accused for his father’s sins, if any. The fact that the accused slashed the baby, not once, but repeatedly, is enough proof that the attack was merciless, and wholly meant to result into no other eventuality other than instant death of the baby. What kind of an adult fully grown-up man with a wife and children act like this if not a barbaric savage?
19. Looking at the circumstances of the case, the accused had no justification whatsoever for attacking the baby, whether in the manner he did or otherwise. The fact that the accused had armed himself with a panga when he went to the baby’s home to confront the baby’s father indicates that he had sufficient time to consider the consequences of his intended actions.
20. The above are no doubt serious aggravating circumstances which this Court cannot close its eyes to.
21. I also take into account the fact that according to the pre-sentence Report, although cultural reconciliation rituals have been conducted as an act of cleansing, family members of the baby, particularly the baby’s mother, have completely refused to forgive the accused for the killing.
22. In the circumstances, I find that a non-custodial sentence would not be appropriate in this case. The accused killed an innocent baby through his useless and rash anger. The Court must reiterate that it is not acceptable to take a human life extra-judicially, whatever the

circumstances or level of provocation. I will therefore impose a severe prison sentence but since I find no indication that the accused was at any point released on bond or bail since his arrest after occurrence of the incident on 25/02/2021, 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

23. In circumstances, I make orders as follows:

- i) I hereby sentence the accused, **Amos Kipkeu Chorgem**, to serve **thirty-five (35) 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 arrested, which is reportedly namely, 25/02/2021.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 24TH DAY OF APRIL 2026

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WANANDA JOHN R. ANURO
JUDGE

Delivered in the presence of:

Appellant present in open Court at Eldoret
Ms. Rono h/b for Tarigo for the accused person
Ms. Muriithi h/b for Ms. Mwangi for the State
Court Assistant: Brian Kimathi