

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL CASE NO: E015 OF 2022

REPUBLIC.....PROSECUTOR

R

VERSUS

ESTHER TEMUKO KIBOI.....1ST

ACCUSED

MOSES KEMOI KIBOI.....2ND

ACCUSED

KELVIN KIPROTICH.....3RD

ACCUSED

SENTENCE RULING

1. Pursuant to a plea bargain agreement, **Esther Temuko Kiboi** the 1st Accused herein pleaded guilty to the offence of Manslaughter contrary to Section 202(1) as read with Section 205 of the Penal Code. The Accused was treated as a first offender and her counsel addressed the court in mitigation.

2. Sentencing is a vital part in the administration of justice. Thus, clause 4.6.1 of the Sentencing Guidelines (2023) provides inter alia that the sentencing process is an integral part of the trial and is therefore subject to the fair hearing constitutional guarantees. The Supreme Court of India in the case of, **Antony Pareira V State of Maharashtra (2 AIR 2012 SC 3802)** held that that:

"Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done."

3. These views were reiterated by the Supreme Court of Kenya in **Francis Karioko Muruatetu & another v Republic [2017] eKLR** where it was held that although the death sentence provided for murder in the Penal Code remained lawful, the mandatory nature of the sentence was unconstitutional as it tended to take away the discretion of the court in sentencing. Directing that re-sentence hearings be conducted for affected convicts and prisoners, the court listed some mitigating factors

applicable in a re-hearing sentence for the conviction of a murder charge as follows;

(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;

(h) any other factor that the Court considers relevant.

4. The Supreme Court was also quick to add the caveat that:

“[72] We wish to make it very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process”.

5. Clause 1.3 of the Sentencing Guidelines (2023), identifies the objectives of sentencing as: -

“a) Retribution: To punish the offender for his/her criminal conduct in a just manner. It serves to deter future crime. Victims and society might feel satisfied that the criminal justice system is functioning well when they learn that the offender has received an appropriate sentence for their crimes, which raises trust in the criminal justice system

b) Deterrence: To deter the offender from committing a similar offence or any other offence in future as well as to discourage the public from committing similar offences. Thus, it is divided into two components: individual and general deterrence. Individual deterrence is to dissuade the perpetrator with the objective to inflict a punishment severe enough to deter the offender from engaging in criminal activity. The convict is expected to be discouraged from committing crimes in the future as a result of the sentence. The society is the target of general deterrence. Other people are

deterred from committing those offences by the punishment meted out to those who commit them.

c) Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person. It aims at changing the offenders and make it easier for them to reintegrate into society, through a variety of programs and treatments. It focusses on treating the root reasons of criminal behaviour, such as dependency, mental health conditions, or a lack of education. The objective is to give the offender the resources and assistance they need to upon release, become law-abiding citizens.

d) 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. Any harm done to the victim may be compelled to be repaired or restored by the court. The goal is to put the victim back in his pre-crime status or position. The goal of

restoration is to make up for any harm the perpetrator has caused the victim.

e) Restitution deters crime by financially penalizing the offender. It is somewhat like a civil lawsuit damages judgement and occurs when the court directs the offender to compensate the victim for any injury. Restitution may be required in cases of financial loss, property damage, and, in rare cases, mental suffering. It may also take the form of a fine to help defray part of the expense of the criminal investigation and punishment.

f) Community protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.

g) Denunciation: To clearly communicate the community's condemnation of the criminal conduct.

h) Reconciliation: To mend the relationship between the offender, the victim and the community.

i) Reintegration: To facilitate the re-entry of the offender into the society.

j) Incapacitation's main purpose is to simply keep offenders outside of society so that everyone is safe from their potentially harmful actions. A person convicted of a crime should not be permitted to mingle with the general public if there is no assurance that they will not commit the same crime again. In certain civilizations, punishment takes the form of death sentence, or it may entail a sentence of life in jail without the chance of release.”

6. These guidelines apply to all criminal offences. The 1st Accused is a middle aged woman and mother of six children, some of whom are adults. The resentence report was positive, citing the Accused's positive attitude, supportive family, and the fact that she was remorseful. It was recommended that the 1st Accused be placed on probation as she had already commenced the journey of reform while in custody.
7. The court does not consider a non-custodial sentence suitable on the facts of this case. It was alleged that on the fateful day, the 1st Accused who worked as a farm laborer was involved in a disagreement with the deceased, a manager, who worked with her, after he snatched her phone, apparently to confirm

whether their employer had remitted the workers' salaries. Later in the night, the said deceased manager allegedly accosted the 1st Accused while armed with a *panga*, accusing her of usurping his position on the farm and that the 1st Accused overpowered him, snatching the weapon with which she slashed him. The body was on the next day found hanging in the open close by. The 1st Accused was arrested after her son reported the finding of the body to police.

8. According to the postmortem report, deceased died from excessive blood loss and hypervolemic shock due to multiple cut wounds on his body. The viciousness of the attack tends to negate the claims that the 1st Accused had only acted in self defence, especially as she appears not to have sustained any injuries. The matter is aggravated by the subsequent hanging of the deceased's body in the open, possibly in an attempt to mask the crime. There can be no justification for the kind of egregious violence visited on the deceased.

9. While it is said that the 1st Accused has shown remorse for her offence, the court is of the view that in order to genuinely

commence her journey of rehabilitation, the 1st Accused needs to have adequate time to fully introspect on and take full responsibility for her actions, which inevitably involved her adult son the 2nd Accused who is her co-accused. In the court's view therefore, a prison sentence is called for. In the circumstances, the Accused is sentenced to serve 15 years imprisonment with effect from 12.07.2022 when she was arrested.

DELIVERED AND SIGNED IN OPEN COURT AT KAJIADO ON THIS 23RD DAY OF APRIL 2026.



C. MEOLI
JUDGE

In the presence of:

For the State: Ms. Kambaga

For the 1st Accused: Ms. Wasilwa

For the 2nd Accused: Mr. Kasenga holding brief for Ms. Mageto

For the 3rd Accused: Ms. Kidui for 2nd Accused

C/A: Lepatei