Kiprono alias Geoffrey v Republic (Criminal Appeal 119 of 2017)
[2025] KECA 487 (KLR) (14 March 2025) (Judgment)

Neutral citation: [2025] KECA 487 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

CRIMINAL APPEAL 119 OF 2017

MA WARSAME, JM MATIVO & PM GACHOKA, JJA

MARCH 14, 2025

BETWEEN

PETER KIPRONO ALIAS GEOFFREY ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal against the judgment of the High Court of Kenya at Nakuru (Odero, J.) dated 20th March, 2017 in Criminal Case No. 55 of 2015)

JUDGMENT

1. The appellant was charged with murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence were that on the night of 13th/14th December, 2014 at Kabusienduek village in Bureti District within Kericho County, the appellant murdered his wife, Mercy Chepkemoi Rotich.

2. The appellant pleaded guilty to a lesser charge of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code pursuant to a plea agreement executed on 13th April 2016.

3. After pleading guilty to the charge, the prosecution read out, and the appellant admitted the facts hereunder, which we shall repeat verbatim:

> " On 13/12/2014 at about 5.00 p.m. the accused arrived home together with his wife after a drinking spree. He started beating his wife with a stick because she had not cooked food for the children. A brother of the accused called Tanui went and separated them. He advised them to settle the matter peacefully. Both accused and deceased entered into the house at about 1.00 a.m. The accused went to the house of his brother Charles Cheruiyot Tanui and told him that the deceased had fainted. Charles went to check and found her lying with a cut on the head. She was already dead. They woke their neighbours Wesley and Langat who

went to confirm the death. The accused decided to flee from the scene. He was searched but in vain. Police arrived at 6: 00 a.m. and collected the body which was taken to Kapkatet District hospital. On 15/12/2014, two days later, the accused was arrested and taken to Litein Police Station. A post mortem was conducted on 26/12/2014 by Dr. Langat who formed the opinion that the cause of death was massive intereraniac hemorrhage secondary to head injury."

4. The Judge then proceeded to convict the appellant and sentenced him to 20 years' imprisonment.

5. The appellant being aggrieved with the sentence handed down by the trial court, lodged the present Appeal on a singular ground that; the trial court erred in law by failing to consider the mitigation raised by the appellant hence resulting in a harsh and manifestly excessive sentence.

6. At the hearing of the appeal, the appellant appeared in person while the state was represented by Learned Counsel Mr. Omutelema. Parties adopted their written submissions

7. The appellant faulted the trial court for failing to consider that he and the deceased were both intoxicated when the incident occurred, that the court failed to consider his mitigation including that he was remorseful, that he had four children with the deceased who were now left desolate after the loss of their father for two decades and that the children were now in the care of their grandmother who was a widow and cannot provide for the minors.

8. The case of Bernard Seneyo Letikirich vs Republic [2006] KECA 309 (KLR) was cited in support of the appellant's submissions. It was contended that the appellant in that case killed his father while they were both intoxicated and his sentence of 10 years after a conviction of Manslaughter, was reduced to 7 years. We were urged to similarly reduce the appellant's sentence.

9. On its part, the respondent opposed the appeal and submitted that the aggravating circumstance in the case warranted a severe sentence. Counsel emphasized that the appellant assaulted the deceased before killing her, the injuries sustained pointed to a vicious attack, the appellant fled the scene of the crime and that the crime traumatized the appellant's children.

10. We have considered the appeal before us.With regard to the severity of sentence, Section 379 (1)(a) &(b) of the *Criminal Procedure Code* provides for this court's jurisdiction to entertain an appeal against sentence from the High Court.

11. Sentencing is the discretion of the trial court. As an appellate Court, we are constrained not to interfere with a sentence imposed by the trial Court merely because we would have imposed a different sentence. We can only interfere with a sentence where it is illegal, or founded upon a wrong principle of the law, or a result of the trial Court's failure to consider a material factor, or if the sentence is manifestly excessive in the circumstances of the case. (See Bernard Kimani Gacheru vs Republic [2002] KECA 94 (KLR)

12. We have perused the ruling on sentence delivered by the court in the present case where the Learned Judge in meting out the sentence stated as follows:

> "In his mitigation, it was indicated that he was remorseful and that he had been in custody for one year and 4 months and that the deceased was his wife and that they had been blessed with 4 children all who were in Primary School.
>
> The Court called for social inquiry report...I have dully perused it and I have noted and observed that the accused has been painted as a very violent person, a heavy drinker and also suspected to be indulging in the consumption of illegal drugs and not fit for non-custodial sentence.

> Bearing in mind that the accused has not wasted the court's time in having this case go for the full hearing and determination, taking into consideration that he has been treated as a first offender. Being cognizant of the contents of the probation report, and in view of the fact that the offence of manslaughter carries a maximum sentence of life imprisonment, I sentence the accused to twenty years imprisonment for the offence of manslaughter."

13. In Francis Muruatetu & Another vs. Republic, [2017] eKLR, the Supreme Court of Kenya gave sentencing guidelines with regard to mitigation before sentencing in murder cases to be considered as follows:

    a. .Age of the offender, Being a first offender,

    b. Whether the offender pleaded guilty,

    c. Character and record of the offender,

    d. Commission of the offence in response to gender-based violence,

    e. Remorsefulness of the offender,

    f. Any other relevant factor.

14. In our view, the learned Judge was keenly aware of the guidelines above while considering the appellant's mitigation. The plea of guilt notwithstanding; the social inquiry report was unfavourable to the appellant, it is clear that he habitually assaulted the deceased, even in the presence of their children and even after familial intervention he attacked the deceased viciously, leading to her death.

15. Considering the circumstances of the case, the injuries that were inflicted on the deceased and the appellant's mitigation, we consider a sentence of twenty (20) years imprisonment to be appropriate. The learned judge took all the relevant factors into consideration and balanced them with the aggravating circumstances aforementioned. Consequently, we find that the sentence was, therefore, neither excessive nor illegal, nor do we find any demonstration to show that the trial court acted on some wrong principles or overlooked some material factors as to justify this Court's interference save that the sentence shall be computed from 15th December, 2014, which is the date that the appellant was first arraigned in court.

16. The upshot of the above is that the appellants' appeal has no merit and is dismissed.

DATED AND DELIVERED AT ELDORET THIS 14TH DAY OF MARCH, 2025.

M. WARSAME

.....

JUDGE OF APPEAL

J.MATIVO

.....

JUDGE OF APPEAL

M. GACHOKA CIARB., FCIARB

.....

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR