



**Republic v Chelimo (Criminal Case 65 of 2020)
[2024] KEHC 1630 (KLR) (23 February 2024) (Sentence)**

Neutral citation: [2024] KEHC 1630 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE 65 OF 2020
RN NYAKUNDI, J
FEBRUARY 23, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

BERNARD KIPCHUMBA CHELIMO ACCUSED

SENTENCE

1. The brief facts of this case had that the convict Bernard Kipchumba Chelimo on the 4.10.2018 at Serngetuny village he caused the death of one Phylis Jebet who happened to be his spouse. During the course of the trial the defence initiated a plea-bargaining agreements negotiations within the confines of Section 137(a) – 137(o) of the *CPC*. Having satisfied the requirements of the law the DPP consented to the application and a plea-bargaining agreement was recorded and duly signed by the parties on 24.1.2024. The convict therefore, pleaded guilty to a lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*. Thereafter, sentencing hearing proceeded in earnest in which learned counsel Mr. Miyienda pleaded for leniency bringing to the attention of the court that the convict is the only surviving parent within their marital estate. Further learned counsel contended that it would plausible for the court to exercise discretion to pass a lenient sentence more so even a non-custodial sentence.
2. In so far as the Senior Prosecution Counsel is concerned he proposed a sentence of 10 years imprisonment given the fact that the convict is a first offender, he has no previous criminal record and he has also pleaded guilty to a lesser charge of manslaughter.
3. The charge of manslaughter as premised in Section 205 of the Penal Code prescribes a maximum sentence of life imprisonment. In electing various determinants to arrive at a fair and just sentence I have in mind factors relating to the interests of society. What does that mean? It is to look at the public in relation to the commission of this particular crime as well as their subsequent expectations on a sentence which answers to the issues surrounding such a crime. In my considered view the interests of



society have several features. First at the forefront society is in need of protection from the offender like the convict before this court and the would be offenders out their harboring intentions to strike victims who are commonly refereed as gender based violence. Secondly, femicide in Kenya is on the rise and threatens the very fabric of our society. Thirdly, crimes as this one though a plea of guilty has been entered by the convict the nature of the sentence to be imposed should be such that it would send a warning to potential offender or crime planners. In addition, in weighing one factor or another, the objectives of punishment namely retribution, deterrence, incapacitation and rehabilitation are to be measured alongside aggravating and mitigatory factors. So when considering the imposition, the court must not impose a sentence of imprisonment unless it is satisfied that:

- a. A sentence is being imposed for all or any of the statutory purposes of sentencing and
 - b. Those purposes cannot be achieved by a sentence other than imprisonment and
 - c. No other sentence would be consistent with the application of the principle of sentencing.
4. May be there is a higher starting point within the context of the present sentencing framework in domestic homicide cases. Women comprise the majority of victims in domestic killings within our society. Their voices within the home based environment are silenced by virtue of sustaining their marriages and relationships. They also find access to justice protocols laborious and sometimes traumatic. There is also the issue of traditional beliefs and culture which acts as a restraint to accuse one's spouse for an offence to be processed through the criminal justice system. Take for example the case in point one cannot ignore a breach of trust as between the convict and the deceased. As an integral part of the gender based violence which occurred on the material day.
5. Professor Evan Stark's exposition of the clinical theory of coercive control in his treatise "[*Coercive Control How Men Entrap Women in Personal Life*](#) OUP 2007 pg. 15 had this to say;

coercive control entails a malevolent course of conduct that subordinates women to an alien will by violating their physical integrity (domestic violence) denying them respect and autonomy intimidation, depriving them of social connectedness isolation, and appropriating or denying them access to the resources for personhood and citizenship control. Nothing men experience in the normal course of their everyday lives resembles this conspicuous form of subjugation”

The reasons for this before the abused both physical and psychological is escalated to an homicide there are underlying domestic electric currents which trigger the final act which amounts to grievous actual bodily harm with a causative effect of malice aforethought to cause death. The analysis of the evidence uploaded for purposed of our case the aggravating factors of the offence outweighs any mitigation offered by the convict or the offender for that matter. The terror and pain that the convict inflicted upon the deceased is difficult to imagine she was attacked severally from 9.00 p.m. up to 11.00 p.m. and on completing his mission he abandoned the wife at the floor of the house only to discover in the morning that she was no more and her life guaranteed under Art. 26 of the [*Constitution*](#) had been violated. This is a case in which the seriousness of the offence is exceptionally high and forms one of the appropriate factors to significantly influence the discretion of this court. It follows therefore under the current sentencing regime, the accused culpability is only fit for a custodial sentence and specifics of it is 15 years imprisonment effective from the 16.8.2018 pursuant to the credit given for the period spent in pre-trial detention.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 23RD DAY OF FEBRUARY, 2024

In the presence of:



Offender in person
Mr. Mugun for State

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R. NYAKUNDI
JUDGE

