



**Republic v Cheruiyot (Criminal Case 30 of 2018)
[2024] KEHC 9772 (KLR) (27 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 9772 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE 30 OF 2018**

**RL KORIR, J
JUNE 27, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

AMOS KIRUI CHERUIYOT ACCUSED

JUDGMENT

1. The Accused, Amos Kirui Cheruiyot alongside Vincent Kiprono Langat (2nd and 1st Accused respectively) were charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence were that on 27th October 2018 at Kiplejin Sub Location within Bomet County, they jointly murdered Victor Cheruiyot.
2. The Accused took plea on 6th September 2018. The charge and every element thereof was read and explained to them in the Kipsigis language which language they understood. Both Accused pleaded not guilty to the offence and the plea of not guilty was entered by the court.
3. During the pendency of the trial, Amos Kirui Cheruiyot (2nd Accused) made an offer to plea bargain on 5th May 2021 and further on 22nd June 2022. Subsequently, parties dragged on with the plea negotiations and eventually a Plea Bargaining Agreement was drafted and the same was dated 2nd November 2022. The Plea Agreement indicated that the Accused had agreed to plead guilty to the lesser offence of manslaughter.
4. On 27th November 2023, this court accepted the Plea Agreement after interviewing the Accused and satisfying itself that he executed the Plea Agreement voluntarily.
5. On the same day (27th November 2023), the Accused took plea for the offence of manslaughter. The charge and every element thereof was read and explained to him in the Kipsigis language which he understood and he pleaded guilty. The court entered a plea of guilty for the offence of manslaughter.



6. The facts as read by the Prosecutor and captured in the Plea Agreement are as follows:-

“On the 27th day of October 2018, the Accused and the deceased were drinking illicit brew (changaa) at the home of Beatrice Mutai and thereafter a quarrel started between Vincent Langat and Wesley Kirui. A fight ensued at the Changaa den between the two, and the deceased was trying to separate them, but Amos Kirui Cheruiyot, the 2nd Accused snatched the knife from Vincent Langat that he had used to stab Wesley Kirui and accidentally hit the deceased thereby stabbing him on his chest.

The deceased was rushed to Tenwek Hospital for treatment and the deceased was declared dead on arrival at the Hospital.

A postmortem examination was conducted on the body of the said Victor Cheruiyot on 2nd November 2018 at Tenwek Mortuary by Dr. Baron Stanley and the result of the said examination, the cause of death was due to cardiac tamponade as a result of penetrating chest wall injury which injured the pericardium which penetrated to the left ventricle after being stabbed by a sharp weapon during the assault.

On 3rd December 2018, the Accused herein was arrested and later arraigned in court with a charge of murder and which offence has now commuted to a charge of manslaughter.”

7. The Accused accepted the facts as true and the court convicted him on his own guilty plea for the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code.

Pre-Sentence Report

8. The Pre-Sentence Report was prepared by the Probation Officer, Bomet County and it was dated 15th May 2024 and filed on the same day. The Report stated that the Accused was a casual labourer who over indulged in alcohol. That the Accused regretted committing the offence and sought this court’s leniency.

9. The Report stated that the Accused took full responsibility for his actions even though he did not intend to kill the deceased. The Report further stated that the community did not have any issues with the Accused as it was his first offence. That he had a good personality but over indulged in alcohol.

10. The Probation Officer recommended that the Accused was suitable for community based rehabilitation through Probation.

Victim Impact Statement

11. The court is required by the Victims Protection Act to take into consideration the views of the victims or the victim impact statement. Section 12 of the *Victim Protection Act*, 2014 provides that:-

(1) A victim of a criminal offence may make a victim impact statement to the court sentencing the person convicted of the offence, in accordance with section 329C of the Criminal Procedure Code (Cap. 75) and that statement may be considered by the court in determining the sentence of the offender.

(2) If a victim expresses a wish to make a victim impact statement, a prosecuting agency shall refer the victim to an appropriate victims' services agency for assistance in preparing the victim impact statement.

(3) A victim has a right to present a victim impact statement in all cases where the court is to consider victim protection and welfare.



- (4) The statement referred to under subsection (1) shall include information on the impact of the offence on the victim's life and any concerns the victim may have about their safety.
12. The Victim Impact Statement dated 15th May 2024 stated that the deceased's wife and children suffered emotional and psychological trauma after the deceased's death. That they later came to terms with their loss and had moved on with their lives. The Victim Impact Statement further stated that the deceased's wife knew that the offender (Accused) did not intend to kill her husband and bore no ill will towards the Accused. That she had received a cow which symbolized forgiveness and reconciliation between the two families.

Mitigation

13. Mitigation by the Accused was made on his behalf by his counsel, Mr. Koske. Counsel submitted that the Accused was remorseful and apologetic for the commission of the offence. That the Accused was only stopping a fight and had no intention of stabbing the deceased. Counsel further submitted that the families of the Accused and the deceased had reconciled. He prayed for a non-custodial sentence.
14. Further Mitigation was done on behalf of the Accused by Ms. Chirchir who held Mr. Koske's brief. Counsel added that the Accused had a good record while in prison and that he had reformed. That his family was willing to take him back.
15. The State through Mr. Njeru submitted that the Accused was a first offender and had saved the State's resources by plea bargaining. That the Pre-Sentence Report stated that the victims had forgiven the Accused. Counsel urged this court to consider that a life had been lost and he prayed for a custodial sentence however lenient.
16. Sentencing serves multiple purposes as enumerated in the Sentencing Policy Guidelines 2023 which outline the objectives of sentencing at paragraph 1.3.1 as follows:-
- Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other- in so far as possible, sentences imposed should be geared towards meeting the objectives in totality.
- i. Retribution.
 - ii. Deterrence.
 - iii. Rehabilitation.
 - iv. Restorative justice.
 - v. Community Protection.
 - vi. Denunciation.
 - vii. Reconciliation.
 - viii. Reintegration.
17. The penal section for the offence of manslaughter is contained in section 205 of the Penal Code which provides:-
- Any person who commits the felony of manslaughter is liable to imprisonment for life.
18. I have considered the circumstances of the case. The Accused and the deceased were drinking changaa on the material day when Vincent Langat (co-Accused) and Wesley Kirui got into an argument and a



fight broke out. The deceased and the Accused (Amos Kirui Cheruiyot) tried to separate the two and in the process, the Accused grabbed the knife from his co-Accused and stabbed the deceased. The stab injuries later resulted in the death of the deceased.

19. I have considered the Pre-Sentence Report which painted the Accused as having a good character which was only blighted by excessive alcohol consumption. He had no previous criminal record. The Report also stated that the Accused was suitable for community based rehabilitation through Probation.
20. I have considered the Accused's mitigation that he was a first offender and was remorseful. I have also considered the fact that the Accused took full responsibility for his actions and his family had taken steps to undertake traditional reconciliation with the deceased's family. The Probation stated that the deceased's family had accepted the reconciliation gesture but also left the matter to the court to deal with the Accused as it wished.
21. In the final analysis, having considered the circumstances of the case, the Accused's Mitigation, the Pre-Sentence Report and the Victim Impact Statement, it is my finding that the due to the circumstances of this case, the Accused merits the mercy of this court and a lenient sentence.
22. I have also taken into consideration that the Accused was granted bail on 30th September, 2020 but was unable to meet the bond terms. He has therefore been in pre-trial custody since December 2018, a period of five and half years. I consider this sufficient custodial period.
23. The Accused is sentenced to serve 3 years' Probation from today.

RULING DELIVERED, DATED AND SIGNED THIS 27TH DAY OF JUNE, 2024.

R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Accused, Defence Counsel Mr. Koske, Mr. Wainaina for the State and Siele(Court Assistant)

