

KENYA / JUDGMENT

Republic v Mutai [2026] KEHC 10875 (KLR)

[2026] KEHC 10875 (KLR)

COURT

High Court

BEFORE

JRA Wananda

CASE / FILE NUMBER

Criminal Case E010 of 2023

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REPUBLIC OF KENYA**IN THE HIGH COURT OF KENYA AT ELDORET****CRIMINAL CASE NO. E010 OF 2023****REPUBLIC.....PROSECUTION****VERSUS****SHADRACK KIPCHUMBA MUTAI.....ACCUSED****RULING ON SENTENCE**

1. The accused, then about 20 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 2/05/2023, at Tildet village, Kesses Sub-County, within Uasin Gishu County, he murdered one **Isiah Kiplagat Kemboi**, a 25 years old village-mate.
2. **Ms. Ruto Advocate** represents the accused, while **Prosecution Counsel Ms. Clare Muriithi** appears for State.
3. The accused took plea on 25/05/2023 and pleaded not guilty. The trial then took off on 11/07/2024 when the first Prosecution witness testified. The parties however subsequently entered into plea bargain discussions which eventually culminated to the Plea Bargain Agreement dated 25/03/2025, which indicated that the accused had agreed to plead guilty to the lesser charge of Manslaughter, and to then let the Court determine the sentence.
4. The matter then came up for plea bargain hearing before me on 6/11/2025. The accused was sworn on oath, and after examining him, I recorded my satisfaction that **Section 137F-137G** of the **Criminal Procedure Code** 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, that he fully understood the effect thereof, and that members of both

families had been involved in the process. I thus allowed the 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, basically as follows:

“The deceased, Isiah Kiplagat Kemboi. and the accused, Shadrack Kipchumba Mutai, hail from Tildet village in Kesses, Uasin Gishu. The deceased's sister namely R.J. was at the time a school-going minor. On the night of 2/05/2023, the deceased in the company of his brother by the name VK, and another, went to confront the accused for eloping with, and having illicit sex with R.J. at his house. Enroute, the 3 met the accused escorting R.J. back home, as they by passed each other, the deceased confronted the accused, and they fought. The accused fell down, and the deceased was stabbed on the neck and chest while the accused injured on the head and limbs. Samuel Kibiwott Bitok, a Nyumba Kumi official, was among the neighbours who responded to the alarm raised, he found the deceased down, already lifeless, and rushed the accused, together with R.J., to Burnt Forest Sub County Hospital where they were treated.

The matter was reported at Kondoo Police Station, the police visited the scene and recovered a knife, they also issued P3 Form in respect to the accused and the minor, R.J., which was filled on 9/05/2023, showing bodily injuries. On the same day, a post mortem on the deceased was conducted at Moi Teaching and Referral Hospital (MTRH) and the resultant form filled, in which a penetrating stab wound was established to be his cause of death. A decision was then made to charge the accused with murder which by this plea agreement has been reduced to manslaughter.”

1. Prosecution Counsel then produced the P3 Form for the accused, Post Mortem Report dated 9/05/2023, and, the knife referred to above, as exhibits.
2. 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 disclosed sufficient factual basis for the charge, this Court accordingly convicted the accused on the offence of Manslaughter on his own plea of guilty.
3. I then directed that a pre-Sentence Report be prepared and filed, which was done. The Report, dated 28/10/2025, and prepared by the Probation & Aftercare Service Elgeyo Marakwet County, indicated that it had been compiled from information obtained from, **inter alia**, the Court file, the offender, family members of both the accused and the deceased, and also the local administration.
4. Regarding the sentence to be meted out, **Ms. Ruto**, in mitigating on behalf of the accused, submitted that according to the Pre-Sentence Report, the accused currently has very good ties with the family of the deceased with which he has since reconciled, that the incident was also not pre-meditated as it was a matter of provocation, and for which the accused is remorseful, and also that he is from a humble background. She also submitted that the accused has no previous criminal records but pointed out that he is currently serving another prison sentence for an offence which occurred at the same time as the one herein.

She prayed that the two sentences do run concurrently

5. **Ms. Muriithi**, on her part, opposed the prayer that the two sentences run concurrently arguing that the two are different Court decisions arising from different transactions. In her rejoinder, **Ms. Ruto** insisted that the Court can grant the prayer under its inherent powers.

Determination

1. The applicable law on sentencing 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”

1. In determining the appropriate sentence to impose, I take into account the Supreme Court decision in the case of **Francis Karioko Muruatetu & Another v Republic [2017] eKLR** in which it was 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.
2. Similarly, the Court of Appeal, in the case of **[Daniel Kipkosgei Letting Vs. Republic]**(<http://kenyalaw.org/caselaw/cases/view/215923/>) [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.”

1. 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.”

1. I note that in the Plea Bargain Agreement, the Prosecution recommends a prison sentence not exceeding 15 years, while the Defence proposes 5 years.
2. With the above guidelines in mind, I have considered the circumstances surrounding the commission of the offence. The reason for the fight involving the accused and the deceased is said to have been the act of the accused of luring the primary school-going underage sister of the deceased to his house for sex. It is said that the deceased, his brother and others,

upon learning that the accused had taken the girl to his house, waylaid the accused on the road when he was walking the girl home, and engaged him in a fight, probably to “teach him a lesson” for his action, and the fight turned vicious ending with the accused stabbing the deceased to death while also himself suffering substantial injuries. Although the source of the knife was not addressed before me and I do not therefore know whether the accused had armed himself with it prior, or whether he snatched it from the attackers as alluded in the Pre-Sentence Report, the killing of the deceased does not seem to have been a result of a premeditated act. I say so because he was clearly not the aggressor but was fighting back an ambush laid by his attackers. I have also taken into account the fact that the accused has been described as a first offender. He also entered into the Plea Bargain Agreement and pleaded guilty to the lesser charge of Manslaughter, thus saving much judicial time. I have also considered the apparent remorse he has displayed.

1. I have also considered the contents, and recommendations of the Pre-Sentence Report. The salient observations I make therefrom includes that the accused was probably, at the time of the fight, intoxicated. It is also reported that the two families have since reconciled, some form of “compensation” made, and the accused forgiven, and, as such, “cleansing” has been conducted under the Kalenjin culture. The community and the local administration are also said to be in support of the proposal that the accused be treated with leniency. The Report then recommends that the accused be given a non-custodial sentence considering that he is already serving a 20 years prison sentence for defilement of the same girl the subject hereof in **Magistrate’s Court Criminal (Sexual Offence) Case No. E084 of 2023**. The accused is also of the young age of 23 years, and has also shown evident desire for re-integration back to the community to rebuild his life. The above are, no doubt, mitigating factors which ought to have a bearing on the sentencing.
2. There are however notable aggravating circumstances. For instance, from the Post Mortem Report, it is clear that the manner in which the accused executed the killing was heinous and cruel. This is confirmed by description of the cause of death as “***cardiac tamponade due to hemopericardium due to penetrating stab wound***”. In choosing to engage in a physical combat, the accused assumed a foreseeable risk of inflicting grievous, and potentially terminal harm. Although, as aforesaid, whether the accused had armed himself with the knife prior, or whether he snatched it from the attackers, was not addressed, by stabbing the deceased on the chest, the accused resorted to a degree of violence that was excessive, disproportionate and unnecessary. He deliberately targeted the chest fully aware that an assault of that nature would have severe impact on a human being. Even if he faced an threat to her life, the opportunity to retreat and de-escalate the situation remained available to him. By choosing confrontation over flight, he exercised a fatal error in judgment which ended up with disastrous consequences. These are clear aggravating circumstances that this Court is duty-bound to consider.

3. In the circumstances, I find that a non-custodial sentence would not be appropriate in this case. Through a needless and rash action by the accused to engage in an unnecessary fight, a human life was lost and the Court must reiterate that it is not acceptable to take a human life extra-judicially, even if unintended, whatever the circumstances or level of provocation. I will therefore impose a prison sentence but since I find no indication that the accused was at any point released from custody since his arrest despite being granted bond/bail, the period that he will serve the sentence shall, in accordance with the provisions of **Section 333(2) of the Criminal Procedure Act**, be mitigated by a consideration of the period he already served in remand custody.
4. I will not comment on the prayer by the defence that the sentence to be imposed herein do run concurrently with the one for defilement imposed in **Magistrate's Court Criminal (Sexual Offence) Case No. E084 of 2023**. This is for the simple reason that such other criminal case is not before me, and has already been determined by a different competent Court.

Final Orders

1. In circumstances, I make orders as follows:
2. I hereby sentence the accused, **Shadrack Kipchumba Mutai**, to serve **nine (9) years** imprisonment.
3. In computing the period to be served in prison, the period already spent by the accused in custody during the trial, shall be deemed as already served portion of the prison term. In other words, the date of arrest not being clear, the period that the accused is to serve in prison shall be computed from the date of his arraignment, namely, 15/05/2023.
4. Right of appeal within 14 days is hereby explained to the accused.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 17TH DAY OF JULY 2026

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WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

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| **Accused present in open Court** | |

| **N/A for Counsel for the accused** | |

| **Ms. Muriithi for the State** | |

| Court Assistant: Brian Kimathi | |

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