



Republic v Kirui (Criminal Case 2 of 2018) [2023] KEHC 18232 (KLR) (27 April 2023) (Ruling)

Neutral citation: [2023] KEHC 18232 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE 2 OF 2018**

**RL KORIR, J
APRIL 27, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

JACKSON KIBET KIRUI ACCUSED

RULING

1. Jackson Kibet Kirui (Accused) woke up on the 16th day of December 2017 at his home in Kitoben village determined to discipline his daughter Daisy Chepngetich (now deceased). According to the prosecution evidence, the daughter had just returned home after missing for some days. He sought the assistance of his sons to tie her to a chair and proceeded to question and beat her. He further called in the assistance of his brothers Robert Kiprono Malel (PW1) and John Kipkosgei Malel (PW2) to assist in counselling her.
2. According to the accused the daughter had given the family a hard time by running away from school and home. The so called discipline and counselling session however had a sad ending as Daisy Chepngetich fell and died that evening.
3. The Accused was arrested and charged with the offence of murder contrary to section 202 as read with section 204 of the *Penal Code*. At the conclusion of the trial the court found that he had no malicious intent and acquitted him of the charge of murder. He was found guilty and convicted of the offence of manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code.
4. The sentence hearing was held on March 23, 2023. Learned defence counsel Mr. J.K. Koech submitted that the Accused was 60 years old and a father of 8 children, the last two of whom were in secondary school. That he was the sole bread winner of his large family and was the cornerstone of his extended family. That the Accused was also a community leader. With respect to the offence, Counsel submitted that the Accused was remorseful and regretted his actions. He underscored that the only intention that the Accused had was to discipline and correct his way ward child as he wanted the best for her. That



- he regretted having taken away the life of his own child. Counsel prayed for a non-custodial sentence to enable the accused care of his sickly wife and the family at large.
5. The Accused addressed the court directly. He told the court that he was remorseful and regretted the loss of his child. He said that he was a Christian and was involved in church and community leadership and that his family had forgiven him. He sought the leniency of the court in sentencing him.
 6. The court, in accordance with the Victim's Act, gave an opportunity to the family members who were all present in court to address it. The deceased's mother told the court that the family had come to terms with the loss and had forgiven the Accused.
 7. On his part, Mr. Njeru, Learned Prosecution Counsel submitted that the Accused was a first offender and further that the court may exercise leniency due to the circumstances of the case.
 8. The objectives of sentencing as enumerated in the Judicial Sentencing Policy Guideline 2016 are:
 - i. Retribution: To punish the offender for his/her criminal conduct in a just manner.
 - ii. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - iii. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.
 - iv. Restorative Justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims, communities' and offenders' needs and justice demand that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
 - v. Community protection: To protect the community by incapacitating the offender.
 - vi. Denunciation: To communicate the community's condemnation of the criminal conduct.
 9. From the above, it is clear that Sentencing policy has the twin objective of deterrence and correction. Each case must also be considered on its own circumstances. See *Thomas Mwambu Wenyi v Republic* [2017] eKLR.
 10. This court called for a pre-sentence Probation officer's report and the same was filed on March 22, 2023. It is noted in the report that the victims of the offence were also family members of the Accused. That the family had come to terms with the loss of the deceased and had undertaken traditional cleansing in respect of the incident and had forgiven the Accused. Both the nuclear and extended family members vouched for the good conduct of the accused and stated that they were shocked by the incident which they considered unfortunate.
 11. On the personal profile of the Accused, the Probation officer stated that the accused was 61 years old and was married with 7 children, the eighth being the deceased. That the Accused was a trained accountant who had worked in various places before retiring in 2007 to pursue personal business and farming. On the offence, the Probation officer stated that the accused admitted beating the deceased



and was shocked by her death which he regretted. That he was remorseful and seeks leniency of the court and forgiveness from his family.

12. I have considered the mitigation by the Accused through his counsel and in his direct address to the court. The place and significance of mitigation was expounded by the court in the case of [*Joseph Kaberia Kabinga & 11 Others v Attorney General*](#) [2016] eKLR in the following words:-

“But what is mitigation in our context?” Simply understood, the word mitigation means the act of lessening or making less severe the intensity of something unpleasant such as pain, grief or extreme circumstances. It is an act of making a condition or consequence less severe and in our case it is the act of making a punishment or sentence in a criminal case less severe. In Black’s Law Dictionary Free Online Legal Dictionary 2nd Ed. mitigation is defined as: “Alleviation; abatement or diminution of a penalty or punishment imposed by law. ‘Mitigating circumstances’ are such as do not constitute a justification or excuse of the offence in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability.”

13. In this case the Accused has been convicted of the unlawful killing of his daughter, the deceased. He has submitted in his mitigation that he had no intention to cause her death and deeply regretted the incident. He has prayed for leniency.
14. I have considered the pre-sentence report. The Probation Officer made a home inquiry visit and interviewed the family members who were also victims of the offence. The family regards the circumstances of the offence as unfortunate and have since reconciled themselves to the loss and also forgiven the Accused who is their family patriarch and sole bread winner.
- Indeed the mother of the deceased who is also the wife of the accused told the court that the family had forgiven the Accused and sought leniency.
15. I have no doubt that the Accused had no intention to take away the life of his daughter. What is clear is that he was an enraged parent and went overboard in trying to discipline his child. He resorted to barbaric means of tying her to a chair and beating her for an unreasonable period of time. It did not cross his mind that the assault was unlawful and that the consequences might be tragic.
16. This court has no doubt that the Accused was remorseful. He must also have agonized over his action of taking the life of his child. This court further believes that the accused has had time during the pendency of his trial to reflect upon his actions and its impact on his family. The accused together with his wife and family have suffered loss.
17. The probation report has shown that the accused was a law abiding citizen and a person after the success of his family and community. His earlier antecedents as well his conduct during the pendency of the trial cast him as a person deserving the leniency of the court and a second chance to heal his family. While a custodial sentence would serve a retributive purpose and express Society’s denunciation of the criminal conduct; it was not appropriate in the circumstances of this case. It would serve no rehabilitative purpose either as the Accused was not predisposed to criminality.
18. I have also considered the age of the Accused. He is a retiree aged 61 whose contribution to the community has been lauded in the social inquiry report.
19. Having taken into consideration all the circumstances of the case and the mitigation, I find the Accused deserving of a non-custodial sentence. The Accused is sentenced to serve 3 years’ probation. He shall undergo anger management training and participate in youth mentorship programmes in the community under the guidance of the Probation Officer.



Orders accordingly.

SENTENCE DELIVERED, DATED AND SIGNED AT BOMET THIS 27TH DAY OF APRIL, 2023.

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R. LAGAT-KORIR

JUDGE

Sentence delivered in the presence of the Accused, Mr. Wainaina for the State, Mr. J.K. Koech for the Accused and Siele (Court Assistant).

