



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Republic v Kirui (Criminal Case E002 of 2022)
[2023] KEHC 26492 (KLR) (30 November 2023) (Judgment)**

Neutral citation: [2023] KEHC 26492 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE E002 OF 2022
RL KORIR, J
NOVEMBER 30, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN CHERUIYOT KIRUI ACCUSED

JUDGMENT

1. John Cheruiyot Kirui (Accused) was 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 29th December 2021 in Chepalungu Sub-County within Bomet County, murdered GKY.
2. The Accused took plea on 26th January 2022, and denied the charge. The case was set for pre-trial and thereafter trial dates were taken.
3. The case proceeded for hearing on 17th October 2022 when Josiah Kirui (PW1) testified. When PW1 completed his testimony, learned defence counsel Mr. Kipngetch informed the court that the Accused wished to plea bargain with the Prosecution.
4. A Plea bargaining Agreement dated 29th November 2022 was filed on 10th July 2023. The Plea Agreement indicated that the Accused had agreed to plead guilty to the lesser offence of manslaughter.
5. On 4th October 2023, this court accepted the Plea Agreement after satisfying itself that the Accused signed the Agreement voluntarily and understood his trial rights which he would fore go and further that the resultant sentence was at the discretion of the court.
6. The Accused took plea on the charge of manslaughter On 5th October 2023. He accepted the charge and the court entered a plea of guilty.



7. The learned Prosecution Counsel, Mr. Njeru read the following facts as captured in the Plea Agreement: -

“The brief facts surrounding this case are; on the 29th day of December 2021 it was reported by the Accused of Kamusanga village that on the material day around 0500 hrs someone knocked on his door violently. He woke up armed himself with a kitchen knife and went towards the door, he opened the door and the said person forced himself inside the house, prompting the Accused to stab the person thrice. Thereafter, he came to realize that the person he had assaulted was his neighbor, GKY. The Accused with other neighbors took the deceased to Siongiroi Health Centre where he succumbed to his injuries. The body was immediately taken to Longisa Hospital Mortuary for postmortem. The Accused surrendered himself to Siongiroi Police Station and confessed having killed the deceased. The postmortem report opined that a sharp object was used to stab the deceased.”

8. The Accused accepted the facts as true and the court consequently confirmed his guilty plea and convicted him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*. The court further called for a Pre-Sentence Probation Officer's Report and scheduled a sentence hearing.
9. The Pre-Sentence Report dated 18th October 2023 was filed on 19th October 2023. It stated that the Accused did not deny offence and that he had no intention of killing the victim. That he regretted his actions and presented himself to the police station.
10. The Probation officer further stated that the Accused's family met the victim's funeral expenses and were in the process of reconciliation with the victim's family. The Accused's family stated that even though there was peace and tranquility between the two families, the Accused's immediate release might bring problems.
11. According to the Probation Report, the community through the village elders and community members were opposed to the Accused being released to serve Probationary Sentence. That there was a risk of the Accused being harmed by the public. They further stated that an angry mob had attempted to burn the Accused's homestead and this forced his wife and children to flee the home. The family feared that hostilities would be re-ignited if the Accused was released on probation.
12. The Accused filed his submissions on mitigation dated 16th October 2023 through his learned defence counsel Mr. Kipgetich. He submitted that the commission of the offence was spontaneous and not premeditated. That the victim violently knocked on his door and he concluded that his life was in danger. The Accused further submitted that he committed the offence in self defence.
13. It was the Accused's submission that he was remorseful, a first offender and that he had exhibited good character for the duration he had been in custody and during his trial. That he deserved the least severe sentence as provided for in Article 50 (2) (p) of the *Constitution*.
14. The Accused submitted that he was committed to repair the harm he had caused through reconciliation with the deceased's family. He further submitted that he was still undergoing rehabilitation and that the court should be compassionate and grant him a non-custodial sentence because he had dependants who relied on him.
15. It was the Accused's submission that he had saved judicial time by pleading guilty to the lesser charge of manslaughter and that he willingly surrendered himself to the police.



16. On their part, the Prosecution submitted that the Accused was a first offender and they asked the court to consider that a life had been lost.

17. 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 following objectives in totality.

- i. Retribution.
- ii. Deterrence.
- iii. Rehabilitation.
- iv. Restorative justice.
- v. Community Protection.
- vi. Denunciation.
- vii. Reconciliation.
- viii. Reintegration.

18. In sentencing the Accused, I am guided by the gravity of the offence, the circumstances of the case and the offender's personal circumstances. The court is also required by the Victims Act (2014) to take into consideration the views of the victims or the victim impact statement.

19. In *Jacob Kirimu Kabiru vs Republic* (2010) eKLR, the Court of Appeal held that:-

“We believe that the restricted right of appeal where a bargain has been struck is to assist in speeding up the process and to attain finality at the earliest time possible. However, we note that the superior court even after realizing that the plea was based on a plea bargaining agreement did not consider the mandatory provisions of section 137 I (2) of the Criminal Procedure Code and in particular, the need to take into account a victim impact statement. In our view, such a victim impact statement would have been necessary.....”

20. Similarly in *Leonard Maina Mwangi vs Director of Public Prosecutions & 2 others* (2017) eKLR, Lesiit J. (as she then was) stated:-

“The Applicant relied on the case of *I P Veronica Gitahi & Another v Republic* (supra). In that case the Court described and defined the parameters for intervention by victims' representatives under the VPA as follows:-

“The Act further provides the parameters of the victim's representative's participation in the trial. The victim's views and concerns may be presented in court at any stage of the proceedings as may be determined to be appropriate by the court. Those views and concerns may be presented by the victim himself or herself or by a “legal representative” acting in the victim's behalf, at the stage of plea-bargaining, bail hearing and sentencing, as far as possible to be heard before any decision affecting him or her is taken; to be accorded legal and social services of his or her own choice, and if the victim is vulnerable, to be given these services at the State's expense, and to make a victim impact statement at the stage of sentencing. These



rights must however not be prejudicial to the rights of the accused person or be inconsistent with a fair and impartial trial.....”

21. I have considered the victim’s impact statement contained in the pre-sentencing report. The victim’s family were opposed to the Accused’s release and they were not ready for reconciliation with the Accused’s family. That they awaited justice from this court. The victim’s family further stated that the Accused could have understood the victim’s mental status.
22. I have also considered the circumstances of the offence. The Accused and the deceased were neighbours. The victim aged 14 years knocked on the deceased’s door and the Accused thought that the victim was a thief and stabbed him and the stab injuries became fatal. I have considered that the Accused stabbed his neighbour whom he very well knew had mental disability and was harmless.
23. Having considered the Probation Report, the Accused’s family’s position in the matter and the victim’s statement, I am convinced that the Accused should serve a prison sentence. This is so because a life was lost and a non-custodial sentence would encourage rather than discourage the commission of such offences.
24. 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.
25. I have considered the Accused’s mitigation that he was a first offender that he was remorseful, that he had reformed and that he had exhibited good conduct while in custody. I have also considered the fact that he has saved this court judicial time. He will therefore be spared the maximum sentence which is life imprisonment.
26. The Accused is sentenced to 7 years’ imprisonment. This lenient sentence should give him an opportunity to promote reconciliation with the deceased’s family.
27. In accordance to section 333(2) of the *Criminal Procedure Code*, the sentence shall run from 13th January 2022 being the day of his arraignment.
28. Orders accordingly.

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 30TH NOVEMBER , 2023

.....

R. LAGAT-KORIR

JUDGE

Judgement delivered in the presence of Mr. Njeru for the State, Mr. Ondieki holding brief for Mr. Kipngetich for the Accused and Siele (Court Assistant)

