



**Republic v Kipkoech (Criminal Case E030 of 2021)  
[2022] KEHC 10598 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10598 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
CRIMINAL CASE E030 OF 2021  
RN NYAKUNDI, J  
JUNE 30, 2022**

**BETWEEN**

**REPUBLIC ..... REPUBLIC**

**AND**

**GILBERT KIPKOECH ..... ACCUSED**

**RULING**

1. Gilbert Kipkoech was initially charged with murder of one Ronald Kiprono Korir. On February 9, 2022 the defence moved a motion of a plea bargaining agreement under section 137(A-I) of the *Criminal Procedure Code* which culminated in the state reducing the offence of murder under Section 203 of the Penal Code with that of manslaughter under section 202 of the *Penal Code*. Upon admission of the plea agreement the accused pleaded guilty to the charge giving rise to the sentencing decision for the offence. Under Kenyan Law the offence of manslaughter carries a maximum sentence of life imprisonment.
2. In the instant case I have taken into account the presentence report, the period accused has spent in remand custody since the December 1, 2014 clearly provided in section 333(2) of *Criminal Procedure Code* to be credited to the overall period arrived at by the court as a benefit to the accused. The mitigatory factors of this offence can be deduced from the presentence report dated 21/3/2022. But after considering the hallmark features of the diminished culpability of the accused are also appropriately outlined in the presentence report. In a nutshell the accused at the time of being convicted for the offence of manslaughter had spent more than seven years in remand custody. That period should go towards mitigating the sentence to be imposed by this court. Notwithstanding that clear language in the presentence report certain eligibility criteria as to the justification why the death of the deceased had to occur prematurely lacks from the personal statement of the accused. That's makes the death of the deceased unlawful as there is no evidence of insanity or lack of intellectual disability on the part of the accused at the time of committing the offense.



3. Repeatedly, *the Constitution* under article 26 enshrines the protection and guarantees on the right to life. It is true that this court has to weigh the accused personal circumstances and the mix of all the facts and circumstances in this specific case. However, on a balancing act am not persuaded that the accused be placed on probation from the onset as recommended by the probation officer. In sum I take the view that the accused now a convict ought to be punished as per the law established for there is no evidence of real victim-convict mediation in seeking forgiveness for the loss of their loved one. The remorse and regret could take the form of a letter or a personal statement to the victim family demonstrating contrite spirit for the wrong act. My reading of the mitigation by the accused/convict as averred in the presentence report constitute a routine wording from convicted persons to a sentencing Judge/Magistrate in a criminal trial. The law envisaged mitigation to be personalized and case specific. Finally, my holding today is to sentence the accused to a term imprisonment of five(5) years having factored the provisions under section 333(2) of the *Criminal Procedure Code*. It is so ordered.

Right of appeal explained.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 30th DAY OF JUNE, 2022.**

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**R. NYAKUNDI**

**JUDGE**

