



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Kirui (Criminal Case 13 of 2019)  
[2022] KEHC 10480 (KLR) (28 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 10480 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CRIMINAL CASE 13 OF 2019**

**RL KORIR, J**

**JULY 28, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**DENNIS KIPROTICH KIRUI ..... ACCUSED**

**JUDGMENT**

1. The Accused, Dennis Kiprotich Kirui was originally charged with the offence of Murder contrary to section 203 as read with section 204 of the [Penal Code](#), Cap 63 Laws of Kenya. Particulars of the offence were that on the 17th day of May 2019, at about 1830hrs at Kapande village, Sotit location, Konoin sub-county within Bomet county he unlawfully killed Bernard Kipkorir Chirchir.
2. The Accused was arraigned before Dulu J. on 28th May 2019 where he took plea and denied the charge.
3. On 22nd March 2022, the Prosecution informed the Court that a Plea Agreement dated and filed on 8th November 2021 had been entered into between the Accused and the State. On 29th March 2022 the court interviewed the Accused in open court to satisfy itself that he understood the plea bargaining process and that he had executed the agreement voluntarily. Consequently, the Court accepted the plea agreement.
4. The Prosecution charged the Accused person with the lesser offence of Manslaughter. The said charge was read and explained to him in Kipsigis language which he understood and responded, "It is true." A plea of guilty was then entered.
5. The facts of the case as read by the Prosecution Counsel were as follows:-

“On the material day at around 1845hrs, the deceased who was a brother to the Accused was at his home with his wife when the Accused walked in while drunk. That after a while, an argument ensued and in the process the Accused picked a panga and cut the deceased on



his thigh. The deceased fell down and his wife screamed for help. Neighbours responded and rushed the deceased to Cheptalal sub-county hospital where he was pronounced dead on arrival. The following day, the Accused surrendered himself to Sotik Police officers who arrested him and handed him over to Sotik DCI for investigation. At the conclusion of the investigation, the accused was arraigned for the offence of murder. Subsequently, the accused and the prosecution entered into a plea agreement which the court accepted leading to the the reduction of the charge from murder to manslaughter.”

6. The Accused accepted the facts as correct. He was then convicted of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code on his own plea of guilty. The court then set down the matter for sentence hearing and directed that a pre - sentence probation be filed.
7. Sentencing is a critical element of the trial process. The Judiciary Sentencing Policy Guidelines (2016) outline the objectives of sentencing at paragraph 4.1 as follows:-

“ 1. The sentences are imposed to meet the following objectives: -

1. Retribution.
2. Deterrence.
3. Rehabilitation.
4. Restorative justice.
5. Community Protection.
6. Denunciation.”

8. The Supreme Court of Kenya in *Francis Karioko Muruatetu & Another vs. Republic*, Petition No.15 &16 (Consolidated) of 2015, listed some of the factors that must be considered during sentencing. The court stated thus:-

“(71) To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a (re-hearing) sentence for the conviction of a murder charge:-

- i. The Age of the offender
- ii. Being a first offender
- iii. Whether the offender pleaded guilty
- iv. Character and record of the offender
- v. Commission of the offence in response to gender-based violence
- vi. The manner in which the offence was committed on the victim
- vii. The physical and the psychological effect of the offence on the victim’s family
- viii. Remorsefulness of the offender
- ix. The possibility of reform and social re-adaptation of the offender
- x. Any other factor the court considers relevant”

See also *Benson Ochieng & Another vs. Republic* (2018) eKLR.



9. In line with the above, paragraph 23.8 on page 49 of the Policy Guidelines further suggests mitigating circumstances as follows: -

“8. Mitigating circumstances warrant a more lenient penalty than would be ordinarily imposed in their absence. They include:-

1. A great degree of provocation.
2. Commitment to repairing the harm caused by the offender’s conduct evidenced by the actions such as compensation, reconciliation and restitution prior to conviction.
3. Negligible harm or damage caused.
4. Mental illness or impaired functioning of the mind.
5. Age, where it affects the responsibility of the individual offender.
6. Playing of a minor role in the offence.
7. Being a first offender.
8. Remorsefulness.
9. Commission of a crime in response to gender-based violence.
10. Pleading guilty at the earliest opportunity and cooperation with the prosecution and the police.

10. During mitigation, counsel for the Accused submitted on his behalf that the Accused was a brother to the deceased and that he was remorseful and prayed for leniency. That the Accused was not married and prayed to be released on a non-custodial sentence. Counsel further submitted that the Accused’s family had forgiven him and prayed that he be released as they had already lost one so and did not wish to lose another son to jail.

11. The Probation Report filed on 10th May 2022 confirmed that the accused and the deceased were brothers. It stated that both had started to indulge in excessive alcohol drinking in Konoin where they worked as casual labourers. That the accused’s relationship with the deceased prior to the incident had not been good. The Accused’s family stated that the Accused had all along been friendly with the deceased as he had brought him on board at his place of work which was far away from home.

12. The views of the victims captured in the probation report show that the family was willing to have the Accused back home and thereafter perform traditional cleansing rituals to which their community subscribes to. The family further stated that the Accused and the deceased related well before. It was their wish that since they had lost one son, the accused be brought back to them. In regards to the community, it was stated that the Accused’s character, conduct and attitude did not adversely affect the community and the society at large.

13. The circumstances of the case were that the Accused and the deceased were brothers and worked together in the same tea plantation. That they argued and quarrelled over a debt of KShs 500 and this argument deteriorated into a fight in which the accused whipped out a panga and slashed the deceased on the thigh from where he bled leading to his eventual death.

14. I have taken into account the circumstances of the case. In particular the views of the victims and the fact that the accused was remorseful and regretted the offence. I have also taken cognizance of the fact



that the Accused willingly accepted his crime, was remorseful and saved the Court precious judicial time by embracing plea bargaining.

15. I am not persuaded that a non-custodial sentence would be appropriate in this case. It is my finding that this offence warrants a sentence that is deterrent in nature, one that places a premium on human life and protects the community. It has been shown that the accused was given to alcohol abuse which contributed to the senseless hacking of his brother. It is my view that a custodial sentence will give him an opportunity to reflect on his action and get adequate rehabilitation from alcoholism.

16. Sentences must be proportional to the offence committed by an Accused. Manslaughter is a serious offence which attracts a life sentence. Section 205 of the Penal Code provides:-

“ Any person who commits the felony of manslaughter is liable to imprisonment for life.”

17. The Judiciary Sentencing Guidelines provide for the principle of proportionality as one of the principles underpinning the sentencing process as follows:-

“ The sentence meted out must be proportionate to the offending behavior. The punishment must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behavior is weighed in view of the actual, foreseeable and intended impact of the offence as well as the responsibility of the offender.”

18. I have considered that the accused was a first offender and has spent some time in pretrial custody. In the case of *Bethwel Wilson Kibor vs Republic* (2009) eKLR, the Court of Appeal held that:-

“ By proviso to section 333(2) of *Criminal Procedure Code* where a person sentenced has been held in custody prior to such sentence, the sentence shall take account of the period spent in custody”.

19. The Accused is sentenced to serve ten (10) years’ imprisonment. The sentence shall run from 18th May 2019, being the date of his arrest.

**JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 28TH DAY OF JULY, 2022**

.....

**R. LAGAT-KORIR**

**JUDGE**

Judgement delivered in the presence of Mr.Muriithi for the State, Ms.Chirchir for the Accused and Kiprotich (Court Assistant).

