



**Republic v Rotich (Criminal Case 27 of 2020)
[2022] KEHC 14447 (KLR) (26 October 2022) (Sentence)**

Neutral citation: [2022] KEHC 14447 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 27 OF 2020
TM MATHEKA, J
OCTOBER 26, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

GILBERT KIPRONO ROTICH ACCUSED

SENTENCE

1. Gilbert Kiprono Rotich and Benard Kipngetch Rotich are brothers who are jointly charged with the murder of their brother Vincent Kipkoech Rotich contrary to Section 203 as read with 204 of the *Penal Code*.
2. It was alleged that on the June 19, 2020 at Kesigenek Village, Kaprororo Location, Kuresoi North Sub County within Nakuru County they committed the offence jointly with others not before court.
3. Plea was taken on July 30, 2020 and each pleaded not guilty.
4. The matter proceeded for hearing before Ngetich J on October 26, 2021. Ms. Wambui appeared for 1st accused, Ms. Sabaya for 2nd accused and Ms. Rita for the state.
5. When the matter came to me on April 27, 2022 Ms. Wambui informed me that Accused 1 wanted to start plea agreement proposal to the state. A plea agreement was signed on June 28, 2022 between Gilbert Kiprono Rotich and the state. The same was recorded by court as per section 137F of the *Criminal Procedure Code*.
6. At the recording I confirmed that the 1st accused had initiated a plea agreement vide section 137(1) (a) and had negotiated for the reduction of the charge of murder to the lesser charge of Manslaughter Contrary to Section 204 as read with section 205 of the *Penal Code*.
7. The accused pleaded guilty to the charge.



8. On the facts, the prosecution told the court that on the material day the three brothers were all drunk. A quarrel had started early in the day. Sometime later the quarrel progressed to the point where the deceased locked up his nephew one Shadrack Kipkurui in the store and threatened to burn it down with him inside. The 2nd accused broke down the window, and Shadrack escaped. His uncles were now rowdy with the two (2) beating Vincent. He decided to call their mother (his grandmother), from where she was. She was taking alcohol.
9. When he returned with his grandmother, they found Vincent lying down bleeding. There was a blood stained piece of wood, and a rope near his body. The two (2) were nowhere in sight. Their mother raised alarm. People came. Police came and took the body away.
10. The accused were later arrested and charged.
11. The cause of death was established to be severe head injury due to blunt trauma.
12. The 1st accused took the blame for the injury to his brother and for his death. He was convicted on his own plea of guilt.
13. The prosecution proposed ten (10) years imprisonment.
14. Ms. Wambui for the accused submitted in mitigation and urged the court to consider a non-custodial sentence. That the 1st accused had pleaded guilty to Manslaughter, that he was a thirty-five (35) year old man, illiterate, never gone to school, married and separated with four (4) children. That upon talking to him she found him to be amiable, and very remorseful for causing the death of his younger brother; and that he understood the repercussions of his actions.
15. She also asked the court to consider the circumstances of the offence, that the deceased, the 1st and 2nd accused, and their mother were all drunk. That when the offence was committed the three of them were drunk and the deceased Vincent had locked his nephew inside the store and threatened to set it on fire.
16. That the rest of the quarrel had proceeded after the nephew was rescued and the three began to fight.
17. That the accused was considered to be kind hearted and that is why he had gone to the rescue of his nephew, he had no malice aforethought, was not a risk to the community, and his mother was at a loss, as due to the incident, she had lost three (3) sons, one (1) to death, and two (2) to this case.
18. After counsel's submissions the 1st accused asked to address the court. He told the court that his brother Benard the 2nd accused had not participated in the injuring of their brother. He asked for forgiveness and for a non-custodial sentence.
19. A pre-sentence report dated 18/8/2022 was filed on 12/10/2022 by an officer from Probation and After Care Services Nakuru. The report speaks very generally about the 1st accused. I noted however that it was not factually correct as it stated that the deceased had threatened his niece.
20. However, it spoke loudly to the fact that the main cause of this set of events was the overindulgence in the drinking of Chang'aa by all the parties involved, including their mother. That this fact was the key contributor to the 1st accused person's failure to go to school due to his parents over indulgence in alcohol. That he himself continued in the vice and it was the reason for his illiteracy at thirty five (35) years old, and the falling apart of his family.
21. The only issue for determination is the appropriate sentence in the circumstances of this case.



22. I have noted the mother’s concern. However I have not seen from the report any information as to whether there is any realisation on the part of the family that this incident was an outcome of abuse of alcohol and the need to deal with that or whether there has been any change in the environment.
23. I have carefully considered all the mitigating factors laid before me. I have also considered the fact that the accused person was drunk, but it is evidence he was not too drunk not to know he had done wrong because he fled the scene after the incident. The aggravating circumstance being that the accused took a piece of timber and fatally injured his younger brother. There is no indication that he was armed. The threat of setting the store on fire had passed. That amount of force appears to have been uncalled for.
24. It is not unusual for the courts to consider non-custodial sentences in circumstances where a fight breaks out in a family setting and one party sustains injuries and dies. This is because there is no malice aforethought and things just get out of hand. Families sometimes have deep rooted issues that tend to into irreversible chaos. That appears to have been the case here. Like why would the deceased want to set his own nephew on fire in his mother’s store?
25. Non-custodial sentences are intended to assist the accused person rehabilitate and reintegrate back to family and community and heal these rifts through the guidance of the probation officer. In this case the pre-sentence report speaks of a reconciliation process that has been initiated. The officer states;

“ a bull has been presented and accepted as goodwill sign that both families are willing to negotiate and complete reconciliation.”
26. While reconciliation is an acceptable process of reintegration, in this case the incident involved same family members, This part of the report stands in contrast with the facts of the case. There is only one family here. That of the accused, the deceased and their mother. There are not two (2) families involved. So which is this one family to whom a bull has been presented? Who has presented the bull, who has accepted the bull? This part, as it sits in that report, reeks of a cut and paste from another report. It is this kind of reports that is lowering the credibility of reports that this court is getting from Probation and After Care Services (PACs) Nakuru. In this particular case, it is necessary that the report be forwarded to the Director of Probation and After Care Services, together with this Ruling for necessary remedial measures.
27. That besides; the report does not state what Probation and After Care Services will be doing with the 1st accused should he be released on probation supervision. The report identifies the issues, the officer is required to provide a recommendation of what they will do with the accused should he be placed on probation supervision or his family, or the environment , I mean the proposed treatment plan as merely placing the accused on probation supervision in the circumstances of this case is not sufficient.
28. In the circumstances the court is not persuaded that a non-custodial sentence would be suitable.
29. I have noted that accused has been in custody since June 26, 2020.
30. He is sentenced to five (5) years imprisonment with effect from June 26, 2020.
Right of Appeal 14 days.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF OCTOBER, 2022.

MUMBUA T MATHEKA

JUDGE

Ms Murunga for state



Ms. Wambui for 1st accused

C/A Jeniffer

Accused present

