

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO.41 OF 2011

REPUBLIC PROSECUTOR

VERSUS

PETER KIPNGETICH BII ACCUSED

SENTENCE

On 11th September 2011, Peter Kipngetich Bii, the accused person, was arrested as a suspect for murdering Robert Kipyegon Bii. He was later arraigned before this court on the information of the Director of Public Prosecutions dated 19th September 2011, to face a charge of Murder contrary to Section 203 as read with Section 204 of the Penal Code. The charge of murder was later withdrawn and substituted with that of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code pursuant to the plea agreement dated 12th March 2013. The particulars of the offence are that, on the 11th day of September 2011 at Tebesonik village, Rungut sub-location in Kericho County, the accused unlawfully killed Robert Kipyegon Bii. The plea agreement was recorded and approved by the Honourable Mr. Justice Mutava who thereafter called for the Probation Officer's pre-sentence report. Before then, the honourable judge had received the accused's learned counsel's submissions in mitigation. The Probation report has now been filed but unfortunately the Honourable Judge is not in a position to sit and pronounce the sentence. Pursuant to the provisions of Section 201(2) as read with Section 200(3) of the Criminal Procedure Code, this court is enjoined to pass sentence in the circumstances in place of the Honourable Justice Mutava.

I have considered the facts in mitigation together with the Probation Officer's report. The history leading to the offence appears to be short and straightforward. The accused and the deceased were brothers who are well known to have had past disputes over their father's land. On the fateful day, the accused had come, home ate and slept. While asleep the accused was woken up by a loud bang on his door. On opening his door, he found the deceased holding a stick and appeared to be drunk. The deceased is said to have slapped the accused who in turn responded by pushing the deceased. The duo fought and fell down. The deceased hit the accused with the stick he had but was overpowered by the accused who grabbed the stick and then used it to beat up the deceased. The two brothers continued to fight until they agreed to cease fighting upon getting tired. They both shook hands and proceeded to spend the night at the accused's house. In the morning the accused left for Chebilat village to visit his ailing mother. It is said that the deceased went outside the accused's house to sunbath and that is where he collapsed and died. The accused's wife noticed that the deceased was dead when she went to serve him breakfast. The neighbours were alerted and quickly milled into the homestead. Police Officers from Litein Police Station visited the scene and removed the body for preservation at Kapkatet District Hospital mortuary. The post-mortem report revealed that the cause of death was blunt trauma from assault resulting in cardio respiratory arrest, suffocation from spinal cord injury and haemothorax respectively.

There is no doubt that the accused is a first offender who is very remorseful. He has been in custody since the date of his arrest *i.e.* from 11th September 2011. It is said, his mother passed away while he was in custody. I am convinced that if the accused has conscience, which I presume he has, he will be haunted by the death of his brother for the rest of his life. The accused has to undergo traditional cleansing ceremonies conducted by community to enable him accepted back to the community. The report by the Probation Officer Sotik, Bureti and Konoin Districts shows that the family, clan members, community leaders and the local Provincial Administration blame the deceased as the trouble shooter. It

is also evident that they are ready to accept the accused back to society. The Probation Officer recommended for the accused to be handed a non-custodial sentence to enable the family and the clan elders perform cleansing rituals. After a deep consideration, I am convinced that the above recommendation appear to be plausible. I am convinced that if the accused is given a non-custodial sentence he will be able to reconcile with his family and clan members after undergoing traditional Kipsigis cleansing rituals. Consequently I sentence the accused to serve 3 years probation under the supervision of the Probation Officer, Sotik, Bureti and Konoin Districts. During this period, the accused shall exhibit good behaviour.

Dated, signed and delivered in open court at Kericho this 18th day of July 2013.

J. K. SERGON

JUDGE