



REPUBLIC OF KENYA



KENYA LAW

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**Republic v Tonui (Criminal Case E030 of 2017)
[2025] KEHC 3527 (KLR) (20 March 2025) (Sentence)**

Neutral citation: [2025] KEHC 3527 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE E030 OF 2017
JK SERGON, J
MARCH 20, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

VITALIS KIBET TONUUI ACCUSED

SENTENCE

1. Vitalis Kibet Tonui the Accused herein, was convicted with the offence of murder contrary to section 203 as read with section section 204 of the *Penal Code* Cap 63 Laws of Kenya. The particulars of the offence are that, the accused on the 6th day of November, 2017 at Mobego Sub Location, Kabianga Division within Kericho West Sub County within Kericho County, murdered Joseph Kipkurgat Byegon.
2. Upon convicting the accused person for the aforesaid offence, this court directed the county probation officer to file a pre-sentence report and also invited the accused to make submissions in mitigation to guide the court in determining the appropriate sentence to be meted out.
3. Mr. Sang, the Learned Counsel for the Accused, submitted that the accused was deeply remorseful for the events that culminated in the demise of the deceased. He submitted that the accused is married with three children and that the offender is a peasant farmer who is the sole breadwinner in his family. He submitted that the accused has been out on bond for about 8 years and within that period he related well with the community and had taken time to reflect on his actions. The Learned Counsel submitted that the offender is a first offender and therefore urged this court to exercise leniency during sentencing and consider a non-custodial sentence.
4. Mr. Ogutu, the Learned Assistant Director of Public Prosecutions, sought a death sentence.
5. This court also called for a pre-sentence report. I have considered the pre-sentencing report prepared and filed by the Kericho County – Probation Officer in respect of the accused person. In the aforesaid



report, it is noted that the offender is married to one wife and together they are blessed with three school going children. The offender is the sole financier to their education, since the wife has a psychiatric condition and she is on medication. The offender supports his wife to access regular psychiatric check-ups at Kericho Referral Hospital. The offender relies on casual work to eke a living and practices small scale farming on the family portion of land. The offender enjoys a quality relationship with his family.

6. The conviction to the instant offence, notwithstanding, the offender maintains that he never committed the instant offence. On the material day, he alluded to having travelled to Nandi County, his wife's paternal home to attend a circumcision ceremony and that he was arrested five days after the awful offence took place.
7. The offender regrets having been implicated of the instant offence which was motivated by hatred of some villagers towards his family who had implicated him in the commission of the awful offence. He alluded that he and the victim were friends, without any quarrel or misunderstanding subsisting between them.
8. The family of the victim were still bitter about the circumstances that led to the demise of their slain kin. They therefore have not been keen to pursue reconciliation with the offender's family and were reluctant to comment as to whether the offender can benefit from a non-custodial sentence.
9. The offender has strong ties in the community. The offender is well known to the local administrator, has no history of criminality and is said to relate well with the community which afforded him a peaceful stay while out on bond, the offender did not face any hostility.
10. Based on the findings of the social inquiry and assessment, the probation officer noted that the offender was out of bond during the pendency of the trial without facing hostility from the community, the offender was able to support his children with school fees and upkeep and support his wife to attend regular psychiatric sessions. The probation officer noted that the offender vehemently denies involvement in the commission of the offence. The probation officer found that the offender was suitable for a non-custodial sentence and likely to benefit from counselling sessions on anger management. The probation officer therefore recommended the offender for placement on a probation order for a period of three years with court supervision and undergo counselling sessions to minimise the risk of recidivism subject to this court's verdict.
11. This court has considered that the accused person was arrested soon after committing the instant offence, he was arraigned and charged on 21st November, 2017 and remanded. The accused made an application for reasonable bail/bond terms, the accused was granted a bond of kshs. 200,000/= with a surety of similar amount and subsequently released on 28th September, 2018, therefore the accused was in custody for a period of ten (10) months.
12. I have considered the circumstances of the offence, submissions in mitigation and have further considered the contents of the pre-sentence report filed by the county probation officer in respect of the accused person. Consequently, I hereby sentence the Accused namely; Vitalis Kibet Tonui to serve 3 years on Probation under the Supervision of the Kericho County Probation Officer.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 20TH DAY OF MARCH, 2025

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J. K. SERGON

JUDGE

In the presence of:



C/Assistant – Rutoh

Prosecutor – Masisa

Accused – Present in Person

Sang for the Accused

