



**Republic v Kirui (Criminal Case E016 of 2020)
[2024] KEHC 217 (KLR) (18 January 2024) (Sentence)**

Neutral citation: [2024] KEHC 217 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE E016 OF 2020
JK SERGON, J
JANUARY 18, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ENOCK KIPROTICH KIRUI ACCUSED

SENTENCE

1. Enock Kiprotich Kirui the Accused herein, was arraigned before this court for the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. However, pursuant to the plea agreement executed by the Accused and the ODPP, the Accused pleaded guilty to the letter offence of manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code and was convicted on his own plea of guilty. The particulars of the offence are that on the night of 13/14th November, 2020 at Poiywek Sub-Location in Kericho East Sub-County within Kericho County, the Accused unlawfully killed Hillary Kibet Kirui.
2. Upon convicting the accused 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. Koko Learned Counsel for the Accused on mitigation urged this court to rely on the pre-sentencing report and mete out an appropriate sentence.
4. Mr. Musyoki Learned Assistant Director of Public Prosecutions submitted that the accused be treated as a first offender.
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 the aforesaid report it is noted that the offender hails from a humble family background, he does casual work to earn a living and enjoys quality



- relationships with his family. The offender does not have past criminal records. The family and clan members were willing to support the offender to reintegrate into society.
6. On the material day both the offender and his brother (the deceased) were drunk. The deceased is said to have provoked the offender by shouting at him whilst uttering abusive words belittling the offender. The offender tried to restrain himself from fighting the deceased, however, the deceased followed him and attacked him with a jembe. A scuffle ensued and culminated into the offender strangling the deceased. In the circumstances it would that the offence was not premeditated.
 7. The offender regrets the awful offence which culminated in the demise of brother. He maintained that the deceased had provoked him and offender pleaded for a lenient sentence stating that he did not have malice aforethought.
 8. The Pre-sentence report also indicates family members had forgiven the offender and were committed to promote peace and coexistence in the family. The family and clan members held sessions to reconcile the family and conducted all the necessary traditional rituals. The family urged the court to exercise leniency and place the offender on a non-custodial sentence, and are willing to assist with the reintegration and rehabilitation of the offender.
 9. The offender enjoys strong ties in the community. The offender had no history of criminality in the community. The community held no grudge against the offender, they are willing to support him to reform further to this the offender had been on bond without any hostility directed at him.
 10. The county probation officer noted that the offender was remorseful for having committed the offence, the offence was not premeditated and the offender was aware that he and the deceased's drinking had contributed to wrong decision making. The offender had since stopped using alcohol. Following the social inquiry and assessment of the information provided by the family and community members, the county probation officer found the offender suitable to benefit from a non-custodial program and further that he would be counseled on anger management, life skills development and on emotional and social trauma, he therefore recommended a probation order sentence for a period of three years.
 11. I have taken cognizance of the fact that the accused entered into a plea bargaining agreement and therefore saved the court's time for trial.
 12. I have considered that the accused was arrested on 14th November, 2020, arraigned in court on 16th November, 2020. The offender was in custody for a period of five (5) months until he was released on bond on 4th April, 2021.
 13. Having considered the circumstances of the offence, submissions in mitigation and having further considered the pre-sentence report, it is apparent that in the circumstances of this case that a non-custodial sentence is appropriate.
 14. Consequently, I hereby sentence the Accused namely: Enock Kiprotich Kirui to serve 3 years on probation under the supervision of the Kericho County Probation Officer.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 18TH DAY OF JANUARY, 2024

J. K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

Prosecutor – Mr. Musyoki



Convict – Present in Person
Koko for the Accused

