



REPUBLIC OF KENYA



**Republic v Sitienei (Criminal Case 25 of 2022)
[2024] KEHC 196 (KLR) (18 January 2024) (Sentence)**

Neutral citation: [2024] KEHC 196 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE 25 OF 2022
JK SERGON, J
JANUARY 18, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ERICK KIPROTICH SITIENEI ACCUSED

SENTENCE

1. Erick Kiprotich Sitienei the Accused herein, pursuant to a plea agreement was charged and convicted with the offence of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#) Cap 63 Laws of Kenya. The particulars of the offence are that on the November 8, 2022 at Chepseon Market in Londiani Sub-County within Kericho County, the Accused unlawfully killed Gilbert Kikwai.
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. Kirui Learned Counsel for the accused, submitted that the Accused suffers from a mental condition and had been declared unfit to stand trial. He submitted that the accused reconciled with the deceased's family and conducted the traditional cleansing ceremony; the family was receptive to having him back in the community. He finally urged the court to exercise leniency and give the offender a lenient sentence.
4. Mr. Musyoki Learned Assistant Director of Public Prosecutions maintained that the accused used a knife; a fatal weapon to stab the deceased severally and that in the circumstances a custodial sentence was appropriate.
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 accused



akes his living as a fruit vendor at Chepseon market. It is noted that the offender suffers from mental impairment and had previously been diagnosed with acute psychosis malaria and bipolar disorder and had been under treatment and psychiatric assessment at Kericho Referral Hospital and Nakuru Psychiatric Unit, his mental condition had subdued for about five years when he was discharged under a clinical officer's assessment.

6. The County Probation Officer noted that the offender enjoys quality relationships with his brother and other family members and the community. The offender is not married but has a fixed abode at home. The offender upon having been diagnosed with bipolar disorder was described as being violent and destructive whenever the condition deteriorates. The offender does not imbibe alcohol and is on medication, his brother has been assisting him to purchase the recommended medication as advised by the clinical officer. The offender has no challenges relating with family and community members
7. The County Probation Officer noted that due to the recurring nature of the mental disorder, the offender was not in his right mind when he committed the offence. The offender was not on medication at the time he committed the offence.
8. The accused person stated that he did not have any quarrel or misunderstanding with the deceased, they were working under the same employer and in the same stall at Chepseon market. He urged the court to exercise leniency during sentencing as he did not have malice aforethought when he committed the offence rather his actions on the material day were beyond his control and that he was laboring under a disturbed mind. He further stated that he is currently on medication.
9. The family of the deceased stated that they had reconciled and that they freely forgave the offender for the instant offence, they were aware that the offender was laboring under a mental disorder, hence understood that the offender was not in his right mind when he stabbed the deceased who was his friend and workmate, however, they left the matter to the court, to exercise its discretion and mete out an appropriate sentence.
10. The community members were aware of the fact that the offender suffers from a mental disorder and that the offender had shown signs of full recovery and upon his discharge from the psychiatric ward, they did not foresee a relapse, they were astonished that he committed the heinous offence, however, they recommended he be pardoned and offered another chance to have regular mental assessments and to be on medication. The village elder recorded no challenges of hostility towards the offender in the community, he was out on bond and was not a threat to the community members.
11. The county probation officer highlighted that based on medical records and the assessment it was clear that the offender was laboring under a mental disorder, which could have relapsed on the material day when he committed the instant offence. The county probation officer therefore recommended a probation order sentence for one year and that during supervisory visits the probation office would assist him to integrate with the community, counsel him on anger management and work with his family in supporting the offender to access psycho-social support services.
12. 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.
13. I have considered that the accused was arrested on November 8, 2022, arraigned in court on November 23, 2022 and remanded in custody and had been in custody for a period of seven (7) months before being released on bond on June 8, 2023.
14. 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.



15. Consequently, I hereby sentence the Accused namely: Erick Kiprotich Sitienei 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:

Prosecutor – Mr. Musyoki

Convict – Present in Person

Kirui & Miss Chepkorir for the Accused

