



**Republic v S alias J (Criminal Case 12 of 2016)  
[2024] KEHC 1235 (KLR) (14 February 2024) (Sentence)**

Neutral citation: [2024] KEHC 1235 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL CASE 12 OF 2016  
JK SERGON, J  
FEBRUARY 14, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JKS ALIAS J ..... ACCUSED**

**SENTENCE**

1. JKS alias J the Accused herein, was charged and convicted with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* Cap 63 Laws of Kenya. The particulars of the offence are that on the 18th day of March, 2016 at [Particulars withheld] Village in Sigowet/Soin Sub-County within Kericho County, the Accused murdered CCS.
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. Koskey Learned Counsel for the Accused, submitted that the accused person is aged 41 years with three children and a wife. The accused was a first offender and is remorseful for the offence he committed. The offender had attempted to break up a fight between his girlfriend and her ex-boyfriend and in the process the accused cut the neck of the deceased, without intention. The accused was intoxicated at the time he committed the offence. Counsel urged the court to exercise leniency and grant the offender a non-custodial sentence to enable the offender to take care of his ailing mother. Learned Counsel submitted and stated that the offender’s family paid compensation to the deceased’s family according to Kipsigis tradition and further that the traditional cleansing and reconciliation rites had kicked off and that the offender would readily be reintegrated into the community.
4. Mr. Musyoki, Learned Assistant Director of Public Prosecutions submitted that the accused had malice aforethought, he had on a previous occasion threatened to kill the deceased. He further pointed



out that the offender had used a panga which is a fatal weapon by aiming at the deceased person's neck and stabbed her repeatedly. The Prosecutor also stated that it was clear that the offender's wife was coached not to give adverse evidence against the accused. The Prosecutor was therefore adamant that this court should not exercise leniency to the deceased.

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 hails from a humble background with no history of criminality. He is a casual worker who worked on people's farmlands to earn livelihood. The offender used to abuse alcohol which resulted in relational challenges with his wife who opted to return to her parents, the offender started having an extra marital relationship with the deceased who had left her matrimonial home.
6. On the material day, the extra marital affair ended in tragedy when the offender and the deceased had a quarrel which culminated in the death of the deceased.
7. The offender was remorseful for having committed the offence, he had participated in performing the traditional rituals and cleansing which promotes reconciliation and co-existence in the community. He urged the court to exercise leniency since he has a young family that fully depends on him.
8. The family of the deceased regretted the circumstances that led to the demise of the deceased and that the offender had no intent to harm the deceased as he and the deceased were good friends who spent time and drank together. The family had sought forgiveness and reconciled with the deceased's family. The family urged the court to exercise leniency and place the offender on a non-custodial sentence, they were ready to help him reform and further that he had a young family and is the primary breadwinner and if placed on a custodial sentence, the family would suffer.
9. The family of the deceased stated that the deceased had left her matrimonial home and started an extra marital affair with the accused which ended in tragedy under regrettable circumstances. The deceased's family forgave the offender and therefore did not hold any grudge against the offender and were not opposed to a non-custodial sentence.
10. The offender relates well with the villagers and has strong community ties. The offender managed to stay on bond without any hostility in the community. The community was not opposed to a non-custodial sentence.
11. The county probation officer noted the above sentiments based on the social inquiry and information provided by the offender, offender's and deceased's family and the community. The county probation officer noted that on the material day the offender and deceased were drunk and had a quarrel in a compromised state of mind and made wrong decisions, the offender acted in manner that culminated in the demise of the deceased, the offender has a young family and promised to adhere to the terms of a non-custodial sentence. The county probation officer deemed the offender suitable for a non-custodial sentence and that the offender needs guidance and counseling on anger management, self-control and life skills and therefore recommended that the court place him on a probation order for a period of three years to effectively rehabilitate the offender.
12. I have considered that the accused was arrested on 19th March, 2016 and was arraigned in court on 21st March, 2016 and has been in custody for a period of three (3) years, ten (10) months before he was released on bond on 22nd January, 2020.
13. Having considered the circumstances of the offence, submissions in mitigation and having further considered the contents of the pre-sentence report, it is apparent that in the circumstances of this case that a short custodial sentence is appropriate.



14. Consequently, I hereby sentence the Accused namely: JKS alias J to serve 5 years imprisonment.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 14TH DAY OF FEBRUARY, 2024**

**J. K. SERGON**

**JUDGE**

In the presence of:

C/Assistant – Rutoh

Prosecutor – Mr. Musyoki

Convict – Present in Person

No Appearance for Mr. Koskey for the Accused

