



**Republic v Bett & another (Criminal Case 9 of 2016)
[2024] KEHC 2308 (KLR) (5 March 2024) (Sentence)**

Neutral citation: [2024] KEHC 2308 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE 9 OF 2016
JK SERGON, J
MARCH 5, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

KIPRONO BETT 1ST ACCUSED

BENARD KIPKURUI 2ND ACCUSED

SENTENCE

1. Kiprono Bett and Benard Kipkurui the Accused herein, were 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, the accused on 14th March, 2016 at Kabolin Village at Tendwet Location within Kericho County, murdered Paul Kipyegon Rugut.
2. Upon convicting the accused persons for the aforesaid offence, this court directed the county probation officer to file pre-sentence reports 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. Morata, the Learned Counsel for the 1st Accused, submitted that the 1st accused was remorseful. He further submitted that the accused is a family person and the sole breadwinner who was also taking care of his ailing mother. The Learned Counsel contended that the 1st accused was a victim of circumstances, he was trying to protect the deceased. The Learned Counsel submitted that the 1st had pursued reconciliation with the deceased's family. He further urged the court to consider the time spent in custody, the 1st accused had been in custody from 2016 up to 2021 for a period of five (5) years. The Learned Counsel highlighted that the 1st accused had continuously honoured summons issued by the DCI. The Learned Counsel therefore urged the court to exercise leniency during sentencing.
4. Mr. Malel the Learned Counsel for the 2nd Accused, submitted that the 2nd accused is a family man and the sole provider in his family as his wife is a casual labourer. The Learned Counsel submitted that



the 2nd accused's family had reconciled with the family of the deceased. He therefore urged the court to consider that the accused person had been in custody for over five (5) years.

5. Mr. Musyoki Learned Assistant Director of Public Prosecutions submitted that the accused persons were armed with a lethal weapon; a panga and that the 1st accused had a protracted land dispute with the deceased and therefore both accused persons planned to kill the deceased. He also noted that the duo had not expressed any remorse.
6. 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 to the accused persons.
7. The probation officer filed a presentence report on behalf of the 1st accused, in the aforesaid report, it is noted that the 1st accused is a trained accountant employed at a local school as a bursar. The offender has a young family with two children and he is the sole breadwinner. It was also noted that the offender was taking care of his ailing mother.
8. In the report it is noted that the offender maintains he did not commit the instant offence, rather he was placed at the crime scene and his name adversely mentioned by the deceased's relatives as linked to the killing, he was subsequently charged with the instant offence.
9. The offender enjoys strong ties in the village, they believe he did not take part in committing the offence and urged the court to pardon him as he was not known to be a violent person or to have a history of criminality. They urged the court to consider the confession by the 2nd accused and exonerate the 1st accused, who they believe had no influence or hand in committing the awful offence. The villagers suspected that the existing land dispute over a footpath between the families, could have caused him to be maliciously enjoined in the case.
10. The family and clan members urged this court to pardon the offender and exonerate him and that the 2nd accused had confessed to the crime thereby exonerating the 1st accused. The deceased's family attested to have been approached by the 2nd accused's family and clan members seeking forgiveness. The deceased's family were eager to pursue justice and were highly optimistic that this Court would deal with the matter decisively.
11. The probation officer following the finding of the social inquiry and assessment noted that the 1st accused had suffered trauma on account of being implicated in the instant offence. The probation officer found him a suitable candidate for guidance and counselling and recommended him for a six (6) months probation order.
12. The county probation officer filed a presentence report on behalf of the 2nd accused, it was noted that he ekes his living as a casual worker as a mason, carpenter and tile layer and is the sole breadwinner in his family. The offender had no history of criminality in the community, he worked as a member of the 'nyumba kumi' initiative.
13. The family of the offender had reached out to the family of the deceased seeking for forgiveness, they therefore urged this Court to exercise leniency when sentencing their kin who had confessed to committing the offence.
14. It was noted that the 2nd accused confessed to committing the instant offence, he admitted to have hit a person with a stone late in the evening of the material day, he maintained that his actions were not premeditated. He was remorseful for committing the offence. He highly regretted the fact that the 1st accused was enjoined in the case misadventently yet did not contribute to the offence, he therefore urged this Court to exonerate him.



15. The family of the deceased are yet to come to terms with the loss of their kin. They urged this Court to exert justice for their slain kinsman.
16. The community and local administration described him as a resourceful person on account of his carpentry and masonry skills, he was neither violent nor involved in petty offences within the community. He was a member of the ‘nyumba kumi’ initiative and worked alongside the Area Chief. He holds strong ties in the community and while out on bond, did not face any hostility from the community. He is currently an assistant pastor at a local church. They believed that it was likely he had acted in self defence since he passed through the deceased’s land, the deceased had threatened harm and created fear to anyone who would tamper with his land or fence. They therefore urged this Court to exercise leniency during sentencing.
17. The county probation officer taking into account the findings of the social inquiry and assessment recommended the 2nd accused be placed on a probation sentence for a period of three (3) years while under community correctional supervision.
18. I have considered that both accused persons were arrested soon after committing the instant offence, they were arraigned in court and remanded, the 1st accused was released on bond on 20th September, 2016, he was in custody for a period of six (6) months whereas the 2nd accused was released on bond on 28th March, 2017, he was in custody for a period of one (1) year.
19. I have considered the circumstances of the offence, submissions in mitigation and have further considered the contents of the pre-sentence reports filed by the county probation officer in respect of both accused persons. Consequently, I hereby sentence the Accused namely: Kiprono Bett and Benard Kipkurui Bii to each serve 10 years imprisonment.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 5TH DAY OF MARCH, 2024

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J. K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

Prosecutor – Mr. Masiza holding brief for Musyoki for ODPP

Convict – Present in Person

Kiprono holding brief for Malel for the Accused

