



**Republic v Chirchir & another (Criminal Case 45 of 2014)
[2024] KEHC 8948 (KLR) (25 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 8948 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE 45 OF 2014
JK SERGON, J
JULY 25, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

GILBERT CHIRCHIR 1ST ACCUSED

VITALIS MAINA 2ND ACCUSED

SENTENCE

1. Gilbert Chirchir and Vitalis Maina the Accused herein, were charged 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 the night of 27th and 28th December, 2014 at Kitait Village in Bureti District within Kericho County, murdered Justice Kibet Koech. However, at the end of the trial the Accused were convicted of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#).
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. Koko, the Learned Counsel for both Accused, submitted that both accused were released on bail and attended court hearings religiously, without fail. The accused persons were able to complete secondary and tertiary education in the intervening period, they had successfully reintegrated into society. The Learned Counsel noted that the families held several reconciliation meetings. The Learned Counsel maintained that the presentence reports were comprehensive and would serve as a guide to this Court. The Learned Counsel urged this Court to consider a non-custodial sentence.
4. Mr. Musyoki, Learned Assistant Director of Public Prosecutions, on his part submitted that the accused persons were first offenders.



5. This court also called for pre-sentence reports. I have considered the pre-sentencing report prepared and filed by the Kericho County – Probation Officer in respect of the accused persons.
6. The probation officer filed a presentence report on behalf of Gilbert Chirchir the 1st accused, in the aforesaid report, it is noted that the 1st accused graduated from Kabete National Polytechnic where he attained a credit in Quantity Survey. He currently does casual jobs within Bomet County. He is helpful and plays a crucial role of assisting his mother in financing the siblings' education. The mother is a peasant farmer.
7. The offender vehemently denies assaulting the deceased and thereby resulting in his demise. The social inquiry revealed that the deceased and the offender had never met anywhere save for the material night of the incident and further that it was the offender, his siblings and other neighbours who attended to the deceased and took him to hospital for medical treatment.
8. The offender was remorseful for the events that transpired on the material night, he had retired to bed but the unfortunate incident happened in their compound leading to the instant charge.
9. The deceased's relatives do not hold a grudge against the offender, they described the incident of the demise of their kin as an unfortunate occurrence. They have reconciled, forgiven the offender and embraced co-existence in the community as they are distant neighbours to the offender.
10. The offender has strong ties and a cordial relationship with the community. The offender was out on bond and no hostility directed to him. The community members and local administrator were in favour of a non-custodial sentence.
11. Based on the findings of the social inquiry and assessment, the probation officer found the 1st offender a suitable candidate for a non-custodial sentence program, guidance and counselling, guidance on how to develop interpersonal and effective life skills and recommended two (2) years probation order with supervision.
12. The county probation officer filed a presentence report on behalf of Vitalis Maina the 2nd accused, it was noted that he pursued a course in Journalism and Film Production. He currently does casual jobs within Kericho County.
13. The offender vehemently denies assaulting the deceased and thereby resulting in his demise. The social inquiry revealed that the deceased and the offender had never met anywhere save for the material night of the incident and further that it was the offender, his siblings and other neighbours who attended to the deceased and took him to hospital for medical treatment.
14. The offender was remorseful for the events that transpired on the material night, he was a juvenile and a form two student at the time.
15. The deceased's relatives do not hold a grudge against the offender, they described the incident of the demise of their kin as an unfortunate occurrence. They have reconciled, forgiven the offender and embraced co-existence in the community, they are distant neighbours to the offender. They were not opposed to the court placing the offender on a non-custodial sentence.
16. The offender has strong ties and a cordial relationship with the community. The offender was out on bond and no hostility directed to him. The community members and local administrator were in favour of a non-custodial sentence.
17. Based on the findings of the social inquiry and assessment, the probation officer found the 2nd offender a suitable candidate for a non-custodial sentence program, guidance and counselling, guidance on how



to develop interpersonal and effective life skills and recommended two (2) years probation order with supervision.

18. I have considered that both accused persons were arrested on 28th December, 2014 soon after committing the instant offence, they were arraigned in court and remanded. The accused made an application to be released on reasonable bail terms and was subsequently released on bond on 18th April, 2017, they were in custody for a period of two (2) years, four (4) months.
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: Gilbert Chirchir and Vitalis Maina to serve three (3) years on Probation under the supervision of the Kericho County Probation Officer.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 25TH DAY OF JULY, 2024

J. K. SERGON

JUDGE

In the presence of:-

C/Assistant – Rutoh

Prosecutor – Musyoki

Convict 1 – Present in Person

Convict 2 – Present in Person.

No Appearance for Koko for the Accused.

