



Republic v Bii (Criminal Case 29 of 2016) [2023] KEHC 4032 (KLR) (2 May 2023) (Sentence)

Neutral citation: [2023] KEHC 4032 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE 29 OF 2016**

JK SERGON, J

MAY 2, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

JAPHET BII ACCUSED

SENTENCE

1. Japhet Bii, the accused person herein, was on November 11, 2022 convicted for the offence of murder. The particulars of the offence are that on July 29, 2016 at Kenegut village in Kericho sub-county within Kericho County, the accused person murdered Samuel Kosgei.
2. Upon conviction, this court invited the accused to submit in mitigation. Mr Musyoki learned Assistance Director of Public Prosecutions asked this court to treat the accused person as a first offender since he did not have the accused person's past criminal record. Mr Musyoki further pointed out that the accused did not deserve leniency considering the circumstances and the manner in which the offence was committed.
3. Miss Kitur, learned counsel for the accused urged this court to be lenient to the accused. She informed this court that the accused is remorseful and that he committed the offence under extreme provocation. She further stated that the accused person has begun the process of reconciliation with the deceased's family. It is also pointed out that the accused person begun the process of rehabilitation and that he is currently undertaking a diploma course in theology. The learned advocate further stated that the accused person is married and is blessed with four school going children and that his parents are old. The accused is said to have spent four years in custody before he was released on bond.
4. This court also called for a Pre-sentence probation report. I have considered the presenting report prepared and filed by the Kericho County – Probation Officer dated February 1, 2023. In the aforesaid report it is noted that the accused is blessed with three children who are all attending primary. It is also noted that the accused was abusing alcohol before he was arrested.



5. In the Pre-sentence report, the accused's family are said to regret the circumstances under which the offender committed the offence and have urged the court to pronounce a non-custodial sentence. It is also noted that the deceased's family are still bitter towards the accused and find no justification for the offender's act.
6. The deceased's family are said to be bitter because the offender's family is reluctant as far as reconciliation is concerned and that it has failed to fulfil the obligations imposed upon the family to enable them conclude the reconciliation process.
7. It is also indicated in the Pre-sentence Probation report that the local community and the administration are of the opinion that the process of reconciliation should be concluded first before a non-custodial sentence can be considered. The community elders have stated that hostility still exists at the community level hence a non-custodial sentence is not appropriate as of now. The county probation officer recommended for a custodial report.
8. Having considered the submissions in mitigation and having further considered the pre-sentence probation report, it is apparent that in the circumstances of this case that a non-custodial sentence is Not appropriate.
9. The accused was arrested on July 29, 2016 and was placed in custody. He was eventually released on bond on June 26, 2019 after spending three years in custody. The period the accused person spent in custody is taken into account in determining the appropriate sentence.
10. It is also apparent that the process of reconciliation has begun but has stalled due to lack of commitment on the part of the accused and his family. I also find no evidence of remorse on the accused's part.
11. In the end I sentence the accused namely: Japhet Bii to serve fifteen (15) years imprisonment.

Dated, signed and delivered at Kericho this 2nd day of May, 2023

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J. K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

Musyoki for the State

Miss Kitur for the Accused

Accused Person – Present in Person

