



**Republic v Cheruiyot (Criminal Case E041 of 2021)  
[2023] KEHC 21256 (KLR) (20 July 2023) (Sentence)**

Neutral citation: [2023] KEHC 21256 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL CASE E041 OF 2021**

**JK SERGON, J**

**JULY 20, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOSEPH KIPNGETICH CHERUIYOT ..... ACCUSED**

**SENTENCE**

1. Joseph Kipngetch Cheruiyot the Accused herein pursuant to a plea bargaining 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 April 23, 2021 at Kiplokyi Village, Kongoni Location in Londiani Sub-County within Kericho County, the Accused unlawfully killed Victor Rotich.
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. Miss Kirui Learned Counsel for the Accused, submitted that the Accused was remorseful and that the accused and deceased were friends. She further submitted that the accused was ready to undergo cleansing ceremonies and she therefore sought for the court leniency.
4. Mr Musyoki Learned Assistant Director of Public Prosecution urged the court to take into account that the accused had used a wooden piece to assault the deceased severally.
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 dated June 20, 2023. In the report it emerged that both parties were friends, there was no conflict or misunderstanding prior to the commission of the offence and that the offender did not act on a premeditated mind. The offender was remorseful,



- beseached the court to exercise leniency and offer him a second chance to mend his wayward behavior while being supervised by the community.
6. The family of the offender expressed their regret as to their kins involvement in the commission of the awful offence, they further stated that their family and that of the deceased are long time neighbors and have had no conflict over the years and further that they were in reconciliation talks with the deceased's relatives and have agreed to conduct the necessary cleansing rituals to promote peace and coexistence in the village. They further stated that the offender and his friend (the deceased) had no differences prior to the offence and that they were willing to support the probation officers in ensuring that the offender is resettled and integrated back to the community.
  7. The family of the deceased were willing to take part in the necessary cleansing rituals, they were not opposed to a non-custodial sentence and failed to understand how the two friends got into a fight that culminated into loss of life.
  8. The local administration stated that the offender was a known tractor driver with no record of committing petty crimes. The local administration was in favour of a non-custodial sentence, the offender has a fixed abode and would be supported to reintegrate back to society by other community members where possible. The community did not harbor any grudge against the offender and further that both the offender and deceased were under the influence of alcohol when the offence took place.
  9. The county probation officer considered the history of the offender, state of the relationship between his family and that of the deceased, sentiments of the local administrator and the risk of reoffending assessment done on the offender and made a finding the offender was suitable to benefit from non-custodial sentence programmes. The county probation officer therefore recommended a probation sentence subject to the court's discretion.
  10. 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.
  11. I have considered that the accused has been in custody since arraignment on May 4, 2021.
  12. 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.
  13. Consequently, I hereby sentence the Accused namely: Joseph Kipngetich Cheruiyot to serve 8 years imprisonment.

**DATED, SIGNED AND DELIVERED THIS 20TH DAY OF JULY, 2023**

**J. K. SERGON**

**JUDGE**

In the presence of:

C/Assistant – Rutoh

Prosecutor – Mr. Musyoki

Accused – Present in Person

No Appearance for Miss Kirui for the Accused

