



Republic v Kirui (Criminal Case 2 of 2015) [2023] KEHC 21254 (KLR) (20 July 2023) (Sentence)

Neutral citation: [2023] KEHC 21254 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO**

CRIMINAL CASE 2 OF 2015

JK SERGON, J

JULY 20, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

ELIUD KIMUTAI KIRUI ACCUSED

SENTENCE

1. Eliud Kimutai Kirui 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 February 1, 2015 in Kericho East District within Kericho County, the Accused murdered Gladys Muthoni Gichure.
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 is aged forty one (41) years, married with two young children. He is a graduate of Public Health. He further submitted that the accused is a first offender and was remorseful for commission of the offence. He stated that the deceased was a close friend to the accused and further that on the fateful day the accused found the deceased drunk with another man, a commotion ensued and the deceased was thrown against a metal door and in the process of trying to assist the deceased, the deceased fell down and got fatal injuries. He therefore urged the court to exercise leniency and consider a non-custodial sentence.
4. Mr Musyoki Learned Assistant Director of Public Prosecutions pointed out that from the facts of this case the accused had the intent to commit the offense in question. He decried the grotesque nature of the offence, the deceased had been tortured before receiving the fatal blow, her brain couched out and the crime scene heavily stained with blood. Finally, he submitted that the accused does not deserve any leniency.



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 12, 2023. The accused is married to one Mercy Kirui and they are blessed with two young children and that he is the primary breadwinner and therefore beseeched the court to exercise leniency.
6. The family of the offender stated that they were astonished when they heard of the case in question, they stated that the offender was not a violent person and that he shared a strong bond with the deceased and they had plans to marry. The family of the offender stated that they had conducted the necessary cleansing traditions for the offender who was out on bond and sought forgiveness from the deceased's family who live in Nyeri County.
7. The local administration, the area assistant chief Mr Chirchir stated that the offender was well known to him and that he does not have any prior criminal record and further that the community was not hostile to the offender who was out on bond, the community was ready to receive the offender and were not opposed to a non-custodial sentence.
8. In the report the county probation officer stated that after he interviewed the offender, he was of the view that the awful happening took place with no predetermined mind and that the offender was caught in a confused state not knowing what had happened between the deceased and the stranger escaping from their house. The county probation officer therefore recommended a probation sentence subject to the court's discretion.
9. 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.
10. I have considered that the accused has been in custody for a period of 3 years, 2 months since his arrest on May 20, 2020.
11. 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 custodial sentence is appropriate.
12. Consequently, I hereby sentence the Accused namely: Eliud Kimutai Kirui to serve 15 years imprisonment

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

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J. K. SERGON

JUDGE

IN THE PRESENCE OF:

C/ASSISTANT – RUTOH

PROSECUTOR – MR. MUSYOKI

ACCUSED – PRESENT IN PERSON

MR. KOSKEY FOR THE ACCUSED

