

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BOMET**

**CRIMINAL CASE NO. 1 OF 2018**

**REPUBLIC.....**

**.....PROSECUTION**

**V E R S U S**

**DOMINIC KIPYEGON KIRUI .....**

**ACCUSED**

**JUDGEMENT AND SENTENCE**

1. The Accused, **DOMINIC KIPYEGON KIRUI** was charged with the offence of **Murder Contrary to Section 203 as read with section 204 of the**

**Penal Code.** The particulars of the offence were that on **26<sup>th</sup>** day of November, 2017 at Kisabei Village of Kiptenden Location in Konoin Sub-County within Bomet County, jointly with another person not before Court murdered **DAVID KIPSANG BETT.**

2. The Accused took plea on **29<sup>th</sup> January, 2018** where he pleaded not guilty to the offence.
3. A Plea Bargaining Agreement was filed in Court on 29<sup>th</sup> July, 2025 and it indicated that the Accused had agreed to plead guilty to the lesser offence of Manslaughter.
4. On 24<sup>th</sup> November, 2025, this Court accepted the Plea Agreement after interviewing the Accused and satisfying itself that he executed the Plea Agreement voluntarily and that he understood his trial rights.

5. On the same day (**24<sup>th</sup> November, 2025**), the Accused took plea for the offence of Manslaughter. The charge and every element thereof was read and explained to him in the Kipsigis language which he understood and he pleaded guilty. The Court entered a plea of guilty for the offence of Manslaughter.

6. The facts as read by the Prosecutor and captured in the Plea Agreement are as follows:-

**“On the 26.11.2017 at around 1600hrs the Deceased David Kipsang Bett went to the home of Dominic Kipyegon Kirui to enjoy local brew chang’aa. There were many other revelers enjoying the sip of chang’aa too. The Deceased was seated in a room together with the Accused.**

**After a while there arose a disagreement between the Accused and the Deceased. The Accused alleged that the Deceased, had entered his bedroom and stolen his national identity card together with Kshs. 5,000/= that was on the bed. The Accused assaulted the Deceased with a wooden stick on the head and leg where he sustained injuries.**

**Members of public who were present separated the Accused from further assaulting his victim.**

**The Victim was taken to Kapkaten Hospital where he was treated and discharged.**

**After few days of treatment, Victim's condition worsened and he was rushed to Longisa**

**Referral Hospital and admitted. He died on 12.12.2017 while undergoing treatment.**

**Post Mortem was conducted on 18.12.2017 and it revealed that the Deceased died from Hypoxia leading to Cardiopulmonary Arrest associated with massive pleural effusion.**

**The Accused was arrested and charged with the Offence of Murder but has now agreed to plead guilty to a lesser Offence of Manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code.**

7. The Accused accepted the facts as true and the Court convicted him on his own plea of guilty for the lesser offence of **Manslaughter Contrary to**

**Section 202 as read with Section 205 of the  
Penal Code.**

**Pre-Sentence Report:**

8. A Pre-Sentence Report was filed on 11<sup>th</sup> March, 2026 and it indicated that the Accused and the Victim argued over allegations that the Victim went into the Accused's bedroom and stole the Accused's Identity Card and 5,000/=. The Accused assaulted the Deceased with a wooden stick on the head and leg where he sustained injuries which later lead to his demise.

9. The Report stated that the Community stated that the Accused had no criminal record and they did not object to the Accused serving a non-custodial

sentence and that his security could be guaranteed if he was released on non-custodial sentence

10. The Report also indicate that the Victim's family have no issue should the Offender be given a non-custodial sentence.

**Victim Impact Statement:**

11. The Victim's family underwent immense psychological and emotional trauma for the loss of the Victim but after the Offender's family came forth to seek for forgiveness, they have since forgiven the Accused and that they have no issue should the Accused be given a non-custodial sentence.

## **Accused's Mitigation:**

12. The Accused is sorry and regrets that circumstances under which he committed the offence and he understands the seriousness of the offence and the consequences therein.
13. He wishes that he given a second chance so that he can mold his life again.
14. Sentencing serves multiple purposes as enumerated in the **Sentencing Policy Guidelines 2023** which outline the objectives of sentencing at paragraph 1.3.1 as follows:-

**Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other- in so**

far as possible, sentences imposed should be geared towards meeting the objectives in totality.

- i. **Retribution.**
- ii. **Deterrence.**
- iii. **Rehabilitation.**
- iv. **Restorative justice.**
- v. **Community Protection.**
- vi. **Denunciation.**
- vii. **Reconciliation.**
- viii. **Reintegration.**

15. The Penal section for the Offence of Manslaughter is contained in **Section 205 of the Penal Code** which provides:-

**Any person who commits the felony of manslaughter is liable to imprisonment for life.**

16. I have considered the circumstances of the case. The Pre-Sentence Report and the Accused's mitigation that he was remorseful and regretted the event that led to the offence. The Accused and the Victim's family advocate for a non-custodial sentence.

17. The **Sentencing Policy Guidelines 2023** at paragraph 2.3.15 lists the factors that a court should consider when deciding to impose a custodial or non-custodial sentence. They are as follows:-

- i) Gravity of the offence: In the absence of aggravating circumstances, or any other circumstance that renders a non-custodial sentence unsuitable, a sentence of imprisonment should be avoided with respect to sentences that have been adjudged as deserving less than three (3) years.**
- ii) Criminal history of the offender: Taking into account the seriousness of the offence, first offenders should be considered for non-custodial sentences except where the seriousness of the offence crosses the custody threshold (where the offence is so serious that neither a fine or community sentence can be justified).**

**iii) Children in conflict with the law: Generally speaking, non-custodial orders should be imposed as a matter of course in the case of children in conflict with the law. The exception to this is in circumstances where in light of the seriousness of the offence, coupled with other factors, the court is satisfied that a custodial order is the most appropriate and would be in the child's best interest. Custodial orders should only be meted out as a measure of last resort and in accordance with the guidance provided under section 239 of the Children's Act, 2022. The court shall also issue post-committal supervision orders upon completion of the committal orders or the**

**attainment of the age of majority where it is appropriate to so do in light of the nature of the offence and circumstances of the offender.**

- iv) Conduct of the offender: Non-custodial sentences are best suited for offenders who are already remorseful and receptive to rehabilitative measures.**
- v) Protection of the community: Where there is evidence that the offender is likely to pose a threat to the community, a custodial sentence may be more appropriate. The probation officer's reports should inform the court of the risk posed by the offender to the community in order to inform sentencing.**

**vi) Offender's responsibility to third parties:**

**Where committing an offender to a custodial sentence is likely to unduly prejudice others, particularly vulnerable persons who depend on them, a court should consider if, in light of the nature and seriousness of the offence, the objectives of sentencing can be met with a non-custodial sentence. The court should enquire into the offender's personal circumstances and, where appropriate, seek the assistance of a pre-sentence report.**

18. This is also in compliance with **Article 159(2) (c) of the Constitution** in as far as **Alternative Dispute Resolution** is concerned and timely resolution of matters.

19. In the final analysis, it is my finding that this was not a suitable case for grant of a non-custodial sentence. A life was lost unnecessarily. In my view, the Accused to serve a custodial sentence.

20. In the end, the Accused, **Dominic Kipyegon Kirui** is sentenced to serve **10 years Imprisonment**. The Sentence shall run from the first date arraigned in Court for Plea taking on **29<sup>th</sup> January, 2018**.

21. 14 days Right of Appeal.

**Judgement delivered, dated and signed this 17<sup>th</sup> day of March, 2026**

.....

**HON. JULIUS K. NG'ARNG'AR**

**JUDGE**

**Judgement delivered in the presence of;**

**Siele/Susan - Court Assistants**

**Ms Koech for the State**

**Accused - present**

ORIGINAL