



**Republic v Kirui & another (Criminal Case 31 of 2018)
[2025] KEHC 5168 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 5168 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 31 OF 2018
SM MOHOCHI, J
MARCH 28, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSEPH KIPSIGEI KIRUI 1ST ACCUSED

ALEX KIBET KIGEN 2ND ACCUSED

RULING

1. The convicts Joseph Kipsigei Kirui and Alex Kibet Kigen were arrested on 9th December 2017 and on the 13th December 2017 pleaded not guilty to the charge of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The Primary Victim, the deceased, was Hezron Tanui.
2. The Court by the judgment delivered on 3rd March 2025 found them guilty of the offence and convicted them accordingly. Before mitigation, this Court did call for pre-sentence report.

Pre-Sentence Report.

3. In the pre-sentence report dated 19th February, 2025, it was stated that the local administration Kapsimbweiyoo Location, Kuresoi South Sub-County, stated that both the accused family and victim have initiated traditional reconciliation which is bidding to the Kalenjin community and a cultural condition for cleansing purposes. The local administrator stated the community members deemed the accused as the bearer of great responsibility in the offence hence the one to fully fulfill the traditional reconciliation process by offering the victim family one color heifer (*Iring'otit*) which has been done and accepted awaiting full clan participation. The chief stated that some of the suspects not before Court had participated in the cleansing initiative privately and paid equivalent of one traditional cow (*Muget*) and promptly left the village when they knew they were being pursued by the security forces. He states the gravity of the offence only struck the community after the demise of the victim



- was realized in the morning aftermath and efforts reconciliation have been embraced. On behalf of the community he asserted the accused had spent considerable effort at reconciliation and has not committed any other offence since arraignment
4. The 2nd Accused continues to deny the offence alleging his brief interaction with the violent crowd could have led him to be implied complicit in the offence. He alleges he closed his business Keringet at about 11:00 pm and was driving home Tendwet village, where he owns a family house when he encountered the violent crowd that had arrested and was beating alleged thieves.
 5. He disembarked his car and inquired of the happenings as he tried to identify the suspects, they had already been severely beaten and were incoherent, one of them was rescued. He alleges he later left to his home the hour having been late.
 6. The 2nd Accused understands the gravity of the offence and regrets being held complicit in the offence for interacting with a violent gang an issue he could have avoided if he drove on to his residence after a long day at work.
 7. The 2nd Accused understands the need to embrace reconciliation, and after arrest, he embarked on traditional reconciliation mechanisms and sought advice from the elders who after consultation and based on circumstances absolved him culturally from what they labeled as bearer of great responsibility in the offence. The first accused was accorded the bearer of great responsibility and mandated to fully lead and complete the traditional cultural reconciliation process an initiative he embraced when the others implicated in the offence were required to achieve cleansing and reconciliation through secondary compensation cultural model (*muget*).
 8. The 2nd Accused having been held complicit in the offence also embraced reconciliation and made peace with victim significant others through participating in secondary compensation as advised by the village elders.
 9. The 2nd Accused pleads for leniency from the honorable Court stating he had not foreseen nor planned to be involved in an activity that led to the loss of life and is traumatized by the turn of events which leaves his circumstances, livelihood and young family vulnerable.
 10. The 2nd Accused has significant social capital in the community as a young entrepreneur, young family man and a role model with many in the community wondering how he got entangled with unsavory, violent, uncouth behavior leading to a painful loss of life.
 11. The 2nd Accused regrets his actions, takes full responsibility and blames himself and accepts that he acted impulsively.
 12. The victim family stated that the accused persons and the victim hail from the same Kipsigis sub-tribe of the Kalenjin community. The community has an elaborate traditional reconciliation mechanism that fully involves the clans of the involved parties.
 13. The victim father before the local authority Kapsumbeiywo location, confirmed the initiation of traditional reconciliation mechanisms where he has already received the first cow (*Iring'otit*) from the first accused and also what is referred to as (*Muget*) payment equivalent to one traditional cow from others complicit in the matter from the second accused.
 14. The two accused are participating in the reconciliation process in accordance with cultural obligations of identifying who bears the greatest responsibility in the offence and as reported and the first accused was identified to bear the greatest responsibility in the offence and hence was to carry out to the finalization of the cultural reconciliation practice that involves the clan members of both parties.



15. The community including the area chief and the neighbor's spoke well of both accused. they describe them as those who prior to that day had never been involved in any criminal activity.
16. The Probation Officer recommended a non-custodial sentence.

Mitigation.

17. The 1st accused urges for a non-custodial sentence, that he is 50 years old with a young family of two children in grade 6 and grade 7. His wife is unemployed, he is an orphan the reason why he dropped out of school in form three.
18. The 1st accused is remorseful and that his pre-sentence report is favorable and the victim impact statement confirmed the customary atonement.
19. The 2nd accused person is 36 years old a family man with three school going children the youngest being in grade 3.
20. He seeks a non-custodial sentence that he is remorseful and has undertaken the cultural atonement.
21. That he learnt his lesson with the ninety (90) days he spent in remand custody.
22. The State urged for a custodial sentence, the victim was a form 2 student, he was not apprehended while committing any crime. The accused robbed him off a chance in life. That atonement does not oust the jurisdiction to sentence.

Analysis and Determination

23. The [Sentencing Policy Guidelines](#) 2023 vide Gazette Notice No. 11587 of 1st September 2023 set out the sentencing principles.
24. Clause 1.3 sets out the sentencing objectives as follows: -
 - i. Retribution: To punish the offender for his/her criminal conduct in a just manner.
 - ii. Deterrence: to deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing similar offences.
 - iii. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding citizen
 - iv. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages sustained by the victim and the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs
 - v. Community protection: to protect the community by removing the offender from the community thus avoiding further perpetuation of the offender's criminal acts.
 - vi. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - vii. Reconciliation: to mend the relationship between the offender, the victim and the community
 - viii. Reintegration: To facilitate the re-entry of the offender into the society
25. Pursuant to Clause 2.3.15, of the said [guidelines](#), the following factors are to be considered in deciding whether to impose a custodial or a non-custodial sentence: -
 - i. Gravity of the offence



- ii. Criminal history of the offender
 - iii. Children in conflict with the law
 - iv. Conduct of the offender
 - v. Protection of the community
 - vi. Offender's responsibility to third parties:
26. It is to be noted that, the Supreme Court in *Muruatetu 1* stated that these *guideless* do not supersede judicial discretion. They help in providing guidance in consistency transparency and fairness.
 27. In this matter, the convicts were involved in the fatal attack on suspected criminals thereby killing one of them. A common occurrence where members of the public violently impose mob sanction on suspected criminals.
 28. The primitive conduct of members of the public killing and lynching suspected criminals on the streets is one that firm actions need to be undertaken to completely eliminate. The Right to life is sacrosanct and taking a life in itself is a serious offence which attracts a heavy punishment.
 29. Section 204 of the *Penal Code* provides that a conviction of murder attracts a death sentence. However, the Supreme Court of Kenya in *Francis Muruatetu & Another v Republic* [2017] eKLR in finding that the mandatory nature of the death sentence to being unconstitutional stated that: -

“ 58. We now lay to rest the quagmire that has plagued the Court with regard to the mandatory nature of Section 204 of the *Penal Code*. We do this by determining that any Court dealing with the offence of murder is allowed to exercise judicial discretion by considering any mitigating factors in sentencing an accused person charged with and found guilty of that offence. To do otherwise will render a trial, with the resulting sentence under Section 204 of the *Penal Code* unfair thereby conflicting with article 25(c), 28, 48 and 50(1) and (2) (g) of the *constitution*”
 30. The Court of Appeal translated a sentence of life imprisonment to a 30-year sentence in the case of *Ayako v Republic* [2023] KECA 1563(KLR) by stating that: -

“On our part, considering this comparative jurisprudence and the prevailing socio-economic conditions in Kenya, we come to the considered conclusion that life imprisonment in Kenya does not mean the natural life of the convict. Instead, we now hold, life imprisonment translates to thirty years' imprisonment.”
 31. In *Njue v Republic* [2024] KEHC 2519 (KLR) the Court set aside a life imprisonment sentence and substituted it with a 30 years' imprisonment sentence for the offence of robbery with violence contrary to Section 296(2) of the *Penal Code*.
 32. In *Jonathan Njeru Manunga v Republic* [2024] KEHC 2332 (KLR), the Court set aside a life imprisonment sentence that had been commuted by a presidential pardon from the death sentence previously imposed and reduced it to the term already served for the offence of murder.
 33. I note that, the convicts also acknowledge the commission of the offence, they are remorseful, apologetic and regrets ever getting involved in the events of the fateful night. I believe they can be rehabilitated and reintegrated back to society. In order for the other victims of their actions to feel



justice has been met and for purposes of retribution and deterrence the offence also calls for a custodial sentence.

34. I have also considered the Convicts having undertaken cultural Kalenjin atonement towards reconciliation with the victim's family.
35. In the premise having considered the circumstances leading to the offence, the gravity of the offence, the fact that the convict are first-time offenders, their respective age, the cultural atonement in reconciliation under the Kalenjin customary, the ventilation for custodial sentence by the prosecution and the recommendation by the probation officer, I am of the considered view that in order to meet the objective of retribution, deterrence and rehabilitation of the convict, a custodial sentence would be most appropriate.
36. The Court notes that the Accused have significantly conducted the trial while out on bail therefore for deterrent effect the accused shall serve their remainder of sentence while in custody as a lesson to all other members of the public against mob in justice/violence.
37. The 1st and 2nd accused persons are hereby sentenced to Ten (10) years Sentence with effect from 9th December 2018 to deter and retribute in order to rehabilitate and reintegrate them back to the society.

It is so ordered.

JUDGEMENT READ, SIGNED AND DELIVERED AT NAKURU THIS 28TH DAY OF MARCH, 2025

MOHOCHI. S. M.

JUDGE

