



Republic v Kirui (Criminal Case 18 of 2017) [2025] KEHC 37 (KLR) (14 January 2025) (Ruling)

Neutral citation: [2025] KEHC 37 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE 18 OF 2017
RL KORIR, J
JANUARY 14, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOHN CHERUIYOT KIRUI ACCUSED

RULING

1. On 8th October 2017, at Chemosoren Village in Mogogosiek Location within Bomet County, the Accused John Cheruiyot Kirui beat up his son Nickson Kiplangat Kirui on his head with a stick and a panga causing the said Nickson Kiplangat Kirui fatal injuries. The pathologist determined cause of the death to be a head injury with bleeding to the brain.
2. The Accused was arrested and charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code. At the conclusion of the trial the court found that he had no malicious intent and acquitted him of the charge of murder. The court stated at paragraph 63 of its Judgement dated 21st November, 2024 thus;

Upon my review of the evidence in respect to malice aforethought, it is my finding that this was a case of an enraged parent (Accused) who sought to “discipline” their child (deceased) but the discipline went awry. The evidence shows that the Accused was enraged by his son’s disobedience to graze the first household’s cattle on land he had reserved for his second wife. It appears that his rage was motivated by issues of family resources. His beastly act of attacking and dealing a fatal blow to his son was however not excusable. Having gone through the evidence, I do not find sufficient evidence to indicate that the Accused may have planned the beating and eventual killing of his son. It was discipline gone overboard. I therefore find that the ingredient of malice aforethought was not proven to the required legal standard.



3. The court consequently found the Accused guilty and convicted of the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code.
4. The sentence hearing was held on 5th December 2024. Learned defence counsel Mr. Mugumya submitted that the Accused was 59 years old, was remorseful and had children whom he took care of with the youngest one being two (2) weeks old. That the Accused's family had been supportive. Counsel prayed that the Accused be granted a non-custodial sentence so that he could be a useful member of the society.
5. On his part, Mr. Njeru, Learned Prosecution Counsel submitted that the Accused was a first offender with no antecedents. Counsel urged the court to grant the Accused a custodial sentence because the Accused killed his own son over a dispute arising out of the Accused's decision to marry a second wife and divide grazing land between the two households. That the Accused ought to have handled the dispute calmly as a father and he did not have to kill his son.
6. The Learned Prosecution Counsel submitted that from the Social Report, the Accused's family had forgiven him. Counsel further submitted that should the court exercise leniency on the Accused, it should send out a strong message that parents should not take the law into their hands under the pretext of disciplining their children.
7. The Sentencing Policy Guidelines 2023 outlines 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.
8. From the above, it is clear that the Sentencing Policy has the twin objective of deterrence and correction. Each case must also be considered on their own circumstances. See *Thomas Mwambu Wenyi v Republic* [2017] KECA 756 (KLR).
9. This court called for a Pre-Sentence Probation Officer's Report and the same was filed on 28th November 2024. It noted in the report that the victims of the offence were also family members of the Accused. That there had been discussions held in the family and further with the clan and after reaching an amicable resolution, the family and the clan forgave the Accused. The report further noted that the family and clan had no objection if the Accused was to be released on a non-custodial sentence.
10. On the personal profile of the Accused, the Probation Officer stated that the Accused was a family man married to two wives and a father of ten (10) children, with the deceased being the second born child



and first son of the first wife. That the Accused was a tea farmer. On the offence, the Probation Officer stated that the Accused regretted committing the offence. That he was remorseful and promised to be a champion of peace if released back to the community. Further that the Accused pleaded for a non-custodial offence.

11. I have considered the mitigation by the Accused through his counsel. The place and significance of mitigation was expounded by the court in the case of Joseph Kaberia Kahinga & 11 others vs Attorney General (2016) eKLR in the following words:-

“But what is mitigation in our context?” Simply understood, the word mitigation means the act of lessening or making less severe the intensity of something unpleasant such as pain, grief or extreme circumstances. It is an act of making a condition or consequence less severe and in our case it is the act of making a punishment or sentence in a criminal case less severe. In Black’s Law Dictionary Free Online Legal Dictionary 2nd Ed. mitigation is defined as: “Alleviation; abatement or diminution of a penalty or punishment imposed by law. ‘Mitigating circumstances’ are such as do not constitute a justification or excuse of the offence in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability.”

12. In this case, the Accused has been convicted of the unlawful killing of his son, the deceased. He submitted in his mitigation that he had no intention to cause his death and deeply regretted the incident. He has prayed for leniency.
13. I have considered the victim impact statement contained in the Pre-Sentence Report. The Probation Officer made a home inquiry visit and interviewed the family members who were also victims of the offence. The family and the clan members regard the circumstances of the offence as unfortunate and had forgiven the Accused who was the family’s sole breadwinner.
14. I have no doubt that the Accused had no intention to take away the life of his son. What is clear is that he was an enraged parent who went overboard in trying to assert his authority over his child. He resorted to barbaric means of hitting the deceased on his head with a stick and a panga. It did not cross his mind that the assault was unlawful and that the consequences might be tragic. This court must sound a warning and caution to parents that violence on children in the name of discipline was unlawful and must attract the full sanction of the law. It was not therefore acceptable that parents should think that they could harm their children or cause them death and get away with it for children do enjoy equal protection of the law.
15. This court has no doubt that the Accused was remorseful. He must have agonized over his action of taking the life of his child. This court further believes that the Accused has had time during the pendency of his trial to reflect upon his actions and its impact on his family. He must have addressed the genesis of his unbridled rage being the inability to manage the affairs of his polygamous household which made him protect the resources he had allocated his junior wife to the extent of killing his own son. The Accused together with his family suffered loss as a consequence.
16. The Probation Report has shown that the Accused was a law abiding citizen who had not committed any criminal offence before this incident. That he was known to be a sober, hard working person and a person of good morals. His earlier antecedents as well as his conduct during the pendency of the trial cast him as a person deserving the leniency of the court and a second chance to heal his family. While a custodial sentence would serve a retributive purpose and express Society’s denunciation of the criminal conduct; it was not appropriate in the circumstances of this case. It would serve no rehabilitative purpose either as the Accused was not predisposed to criminality.



17. I have also considered the age of the Accused. He is aged 59 years and his contribution to the community has been lauded in the social inquiry report.
18. Having taken into consideration all the circumstances of the case and the mitigation, I find the Accused deserving of a non-custodial sentence. The Accused is sentenced to serve 3 years' probation. He shall undergo anger management training and participate in youth mentorship programmes in the community under the guidance of the Probation Officer.

Orders accordingly

RULING DELIVERED, DATED AND SIGNED THIS 14TH DAY OF JANUARY 2025.

R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of Mr. Mugumya for the Accused, Mr. Njeru for the State, and Siele (Court Assistant).

