



**Republic v Kirui (Criminal Case 26 of 2018) [2025] KEHC 38 (KLR) (14 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 38 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CRIMINAL CASE 26 OF 2018  
RL KORIR, J  
JANUARY 14, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**GEOFFREY KIPLANGAT KIRUI ..... ACCUSED**

**RULING**

1. The Accused, Geoffrey Kiplangat 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 15th October 2018 at Sakalkit Village in Kapkimolwa Location in Bomet County, he murdered Philip Kipsang Busienei.
2. At the conclusion of the trial, this court found the Accused guilty of the lesser offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code* and convicted him on 30th May 2024. The court directed the Probation Officer to file a pre-sentence report on the Accused.

**Pre-Sentence Report**

3. The report stated that the Accused regretted the offence and took responsibility for his actions. That the Accused prayed for leniency and asked this court to grant him a non-custodial sentence so that he could make amends with the deceased's family. The Accused's family stated that they depended on the Accused
4. According to the Probation Officer's Report, the community spoke well of the offender and vouched for his strong character while stating to the contrary that the victim was a naughty character in their community. They advocated for a non-custodial sentence for the Accused.
5. The probation officer stated that the families of the victim and the Accused were not only neighbours but were also related by blood and marriage. That the two families had co-existed for long before the offence was committed. He stated that the families had engaged in reconciliation and the victim's



family had forgiven the Accused. The probation officer recommended that the Accused was suitable for community based rehabilitation.

### **The Victim Impact Statement**

6. The report stated that the victim was a close neighbour and a cousin to the Accused's mother and the two families had mutually co-existed. That the two families had reconciled before the deceased was buried and the Accused's family gave out on cow as per the Kipsigis culture.
7. The victim's family stated that they suffered psychological and emotional trauma and the victim's wife was left with the responsibility of taking care of her family single handedly. That however, the family had since coped with the situation.
8. This court conducted a sentence hearing on 23rd July 2024 where the Accused and Prosecution submitted on mitigation.

### **The Accused's mitigation**

9. The Accused's mitigation was submitted by his learned counsel Mr. Koske. Counsel submitted that the Accused was a first offender and was married with three children. That he was the only child in their family and he took care of his aging mother.
10. It was counsel's submission that the victim's and Accused's families had reconciled and undertaken traditional cleansing. That the Accused had been in custody for six years and had reflected on his life and was remorseful. Counsel asked this court to grant the Accused a non-custodial sentence.

### **Submissions by the State.**

11. Mr. Njeru, the learned Prosecution counsel submitted that the court should take into account that the Accused had spent six years in custody. Counsel further submitted that a life had been lost and they asked this court to grant the Accused a custodial sentence however lenient.

### **Consideration by the Court**

12. In meting out a sentence, this court is guided by the objectives of sentencing as set out in law and various legal texts. 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.



13. 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.

14. I have considered the circumstances of the offence and how the deceased was killed. There was evidence of a quarrel and a fight between the deceased and the Accused which culminated in the Accused stabbing the deceased fatally on his belly.

15. I have also considered the fact that the families of the Accused and the victim had performed traditional cleansing rituals and had reconciled. I also have no doubt that the Accused was remorseful.

16. The Accused's family, his counsel and his local community urged this court to grant the Accused a non-custodial sentence. The Prosecution on the other hand urged this court to punish the Accused by handing him a custodial sentence however lenient.

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 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. I have considered the prayer for a non-custodial sentence against the above guidelines and the community's views. According to the Probation Report, the community while pitching for the Accused to be released seemed to justify his actions on the basis that the deceased was a troublesome member of the community. Such sentiments were to be discouraged as the right to life was sacrosanct. The evidence laid before this court showed that the offence was aggravated. It was not a minor thing to stab another in such a gruesome manner that left the deceased's intestines pouring out.
19. This court lauds the respective families of the Accused and the deceased in undertaking traditional reconciliation. The same was important for justice and societal harmony.
20. I have considered that the Accused has been in pre-trial custody for a period of 6 years after failing to meet the bond terms. This has gone to a substantial reduction of his otherwise severe sentence.
21. I sentence the Accused to four (4) years' imprisonment with effect from this date.

Orders accordingly.

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

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**R. LAGAT-KORIR**

**JUDGE**

**Sentence delivered in the presence of Mr. Mugumya for the Accused, Mr. Aiyeka holding brief for Mr Njeru for the State and Siele (Court Assistant).**

