



REPUBLIC OF KENYA



KENYA LAW
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Republic v Elijah (Criminal Case 1 of 2023)
[2023] KEHC 26723 (KLR) (20 December 2023) (Sentence)

Neutral citation: [2023] KEHC 26723 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 1 OF 2023
JN KAMAU, J
DECEMBER 20, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

JOASH KUTAI ELIJAH ACCUSED

SENTENCE

1. The Accused person was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* Cap 63 (Laws of Kenya). He entered into a Plea Agreement on 8th November 2023 whereupon this court convicted him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.
2. The facts of the case are that on 3rd February 2020 at around 2000hours while at Ebusakhe within Emuhaya sub county, Joash Kutai Elijah (the Accused person) was on his way home where he met Daniel Amaya Njiide while armed with a panga. He slapped the said Daniel Amaya Njiide with the flat side of the panga and he (Daniel Amaya Njiide) called for help. Alexander Njiite (the deceased), Susan Amboke and Seluna Olesi accompanied Daniel Amaya Njiide to check what was happening.
3. At the time, the Accused person was still armed with a panga. When he saw the deceased with a stick, he ran towards his compound. The Accused person's brother Melchizedek joined to assist him. The deceased hit the Accused person with the wooden stick who lost grip of the panga which fell. The deceased took the panga and hit the Accused person on the head. They struggled until the deceased fell down. The Accused person took advantage of this and cut the deceased on the head several times.
4. The Accused person's mother went and took the wooden stick and jembe with blood stains that were used in the fight and kept them in her house. The deceased was left unconscious outside the Accused person's house. His family came and took him to Yala Hospital but he succumbed as he was receiving



- treatment. The Accused person was rushed to Coptic Hospital for treatment where he was admitted and discharged the following day.
5. He reported the matter at Luanda Police Station where he was issued with a P3 form which indicated his injuries as “Harm”. He later surrendered himself at Essaba Police Post. DCI Officers from Emuhaya re-arrested him for further police action. The Post-mortem was carried out on 18th February 2020. The cause of death was determined to have been severe head injury secondary to cut wounds due to blunt trauma to the head.
 6. After investigations, the Accused person was charged with the offence before court. The wooden stick was produced and marked as Exhibit 1. The jembe was produced and marked as Exhibit 2. The Exhibit Memo Form dated 21st February 2020 was produced and marked as Exhibit “3A”. The Government Analyst Report dated 22nd April 2020 was produced and marked as Exhibit “3B”. The Post-mortem Report dated 28th February 2020 be and is hereby produced and marked as Exhibit 4.
 7. Having entered into a Plea Agreement, the Accused person urged this court to sentence him to eight (8) years. On its part, the State recommended a sentence of twenty (20) years imprisonment.
 8. In his mitigation, he told this court that he had mental retardation and had to be assisted. He stated that he was remorseful and regretted the death of his cousin. He pointed out that his mother wished him to go and stay with him at Lugari where they relocated after the incident herein.
 9. He asked this court to consider that he was a first offender and that he had no previous records. He therefore urged this court to mete upon him a non-custodial sentence.
 10. The State informed this court that the Accused person could be treated as a first offender. It pointed out that the Probation Report was not favourable to him as he was a threat to himself and to the community. It urged this court to put weight on the Pre-Sentence Report and mete out a deterrent and proportionate non- custodial sentence and a precious life was lost due to his actions that were not warranted.
 11. Notably, sentencing is one of the most intricate aspects of trial. Indeed, a trial does not end unless a sentence has been meted out. The principle of sentencing is fairness, justice, proportionality and commitment to public safety. The main objectives of sentencing are retribution, incapacitation, deterrence, rehabilitation and reparation. The Sentencing Policy Guidelines in Kenya have added community protection and denunciation as sentencing objectives. The objectives are not mutually exclusive and can overlap.
 12. It was also important that the sentence communicate to the community, condemnation of his criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence.
 13. The sentence also had to one that was hinged on retributive justice for the secondary victims. Justice not only needed to be done but it had to be seen to be done.
 14. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of his offence at the time of sentencing him, chances of the Accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
 15. According to the Post-mortem Report, the deceased had severe injury to the head due to cut wounds . He suffered blunt trauma to the head. The Accused person cut him several times. That could not be said to have been a mistake. The several cuts were intended to cause maximum injury to the deceased with a possibility of killing him.



16. The genesis of the altercation was that the Accused person was armed with a panga which the deceased used to cut him with and which he in turn used to inflict several cut wounds on the deceased. He bore a large part of blame for the misfortune that befell him leading to his being charged before this court.
17. Having considered the facts of this case and the Accused person's mitigation, this court to the firm conclusion that a sentence of fifteen (15) years would be suitable and adequate herein. A non-custodial sentence would be unjust.
18. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to fifteen (15) years imprisonment to run from today. The period he spent from when he was first arraigned in court on 24th February 2020 until 19th December 2023 be and is hereby taken into account in line with Section 333(2) of the [Criminal Procedure Code](#) Cap 75 (Laws of Kenya) while computing his sentence.
19. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 20TH DAY OF DECEMBER 2023.

J. KAMAU

JUDGE

