



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HIGH COURT CRIMINAL CASE NO. 18 OF 2017

REPUBLICPROSECUTOR

VERSUS

BENSON MUTHURI M'ARIMI ACCUSED

JUDGMENT

1. Accused Benson Muthuri M'Arimi was convicted for the offence of manslaughter contrary to *Section 202* as read with *205* of the penal code following a plea bargain agreement which reduced the initial charge of murder to manslaughter. The accused was charged on 20/03/2017 and released on bond less than 2 months thereafter on bond approved on 11/5/2017. The accused and the deceased herein were brothers and the killing occurred in the context of a fight over a parcel of land.

2. The facts of the case which the accused accepted upon this plea of guilty were set out by the DPP as follows:-

“9. On the 17th day of January 2017 at 10.00 am in the morning M'arimi Kirika father to both the deceased person was at his home when the deceased person Solomon Mutwiri M'arimi went to his father and informed him that he wanted to plough on his piece of land. The piece of land is close to M'arimi Kirika's house.

10. After a few minutes M'arimi Kirika heard the accused person abuse the deceased. M'arimi Kirika then left his house towards his piece of land which the deceased was ploughing and was also where the noise was coming from. M'arimi Kirika tried talking to both the deceased person and accused person and requested both of them not to fight. This was because the accused person and the deceased were both armed with pangas.

11. The accused person was preventing the deceased from ploughing the piece of land stating that the same belonged to him. A fight ensued. The accused person was cut on his left hand on the pinky finger by the deceased. The accused person then immediately lifted up the panga he was carrying and started cutting the deceased person on the neck and all over the body. M'arimi Kirika then started screaming and that is when the accused person ran away.

12. A neighbour by the name Florence Makena had responded to M'arimi Kirika's screams and went to where she was together with the deceased. Other people also managed to respond to the screams. However the deceased was bleeding too much and he died on the spot. The chief then called police from Igoji police station who came and took the body of the deceased person to Meru Level 5 mortuary.

13. Post mortem was conducted on the 24th day of January 2017 at Meru level 5 hospital whereby the cause of death was found to be excessive bleeding due to deep cuts on the neck and arm

14. The accused had after the incident disappeared to an unknown place and on the 13th day of March 2017 at around 10.00 hrs. the accused person surrendered himself to the police whereby he was arrested and charged with the offence of murder.”

3. In Mitigation, counsel for the accused Mr. E. Kimathi urged the court as follows:-

“It is clear that Deceased was brother to accused. Offence was not premeditated The accused was cut on the small finger. The entire incident is highly regretted. He is extremely sorry. It has been haunting him since it occurred. We request for the court's forgiveness noting that the incident was not intentional. We surrender to the mercy of the court and pray for a light sentence. He is a good citizen. He has no record and he relates well with the community. He has reconciled with his immediate family including his father. We urge for a non- custodial sentence. We wish to indicate that he presented himself to the police voluntarily and he was arrested

and charged. He is remorseful.

4. The pre-sentence report by the Probation Officer recommends as follows:-

“Your Lordship, Before the court is a 41 years old man facing murder charges who is a class 7 dropout and depends on farming to earn a living. The accused hails from Mitune village in Kianjogu location. He is the son of Silas M' Arimi and Bridget Igoki. The accused is married to Winnie Muthoni and they have been blessed with two children; Allan Munene-std seven pupil and Tracy Gatwiri a std one pupil. According to the inquiry carried, many of the family members are peasant farmers and doesn't have a formal source of income. According to the accused views, they were struggling over a piece of land ownership with his late brother which led to a quarrel agitating to the incidence before court. The local administration neighbours and the family members described him as a good man who has been of great help to them. According to the neighbours, he has even been helping them to transport their milk from their homes to Kiamitumi daily. He has also been carrying them with his motorcycle to different places and has always been very reliable.

His parents are elderly and he is the one taking care of them since among 'all his siblings he is the only one that lives closer to them. The accused is ready to take care of his late brother's son who is in class seven upon his release.

The accused has been out on bond since 2017 and he has not been a threat to the members of the community. The members of the community and his parents have also been able to integrate him to them. They are also ready to see him come back to them and live together.

According to the area chief and a close neighbour (Mr. Muthuri Mutwiri) the safety of both the accused and the community members is guaranteed since none of the parties has any bitterness with each other.

Your honor, in our social inquiry parents, sisters and brothers were not against his release on non-custodial sentence, saying he has leant a lesson and they have echoed offender's sentiments to care and protect victim's son in all social economic aspects.”

5. I have noted the mitigation by accused counsel and the Probation Officer's pre-sentence report. However, the circumstances of the charges were that the accused killed his brother in a fatal fight over a dispute relating to a parcel of land is all too prevalent in this region, and a deterrent sentence is warranted to persuade the potential offenders to seek arbitration or adjudication of their land disputes through legal means including the court. The court has taken the period of about 2 months of pre-trial detention awaiting his trial, as noted above.

6. The court considers a sentence of imprisonment for 8 (eight) years to meet the justice of the case having regard to his youthful age of 38 and his status of provider for his spouse and 2 children. The accused shall be reformed by Prison custody and thereafter be rehabilitated into the society all in good time for him to play his part in the bringing up of his children as well as positive development of his community.

ORDERS

7. Accordingly, for the reasons set out above, the court having convicted the accused for the offence of manslaughter Contrary to *Section 202* as read with *205* of the Penal Code, now sentence him to imprisonment for eight (8) years beginning from the date of this sentence.

Order accordingly.

DATED AND DELIVERED 31st DAY OF MARCH, 2022

EDWARD M. MURIITHI

JUDGE

Appearances:-

Ms. B. Nandwa for prosecution counsel.

Mr. E. Kimathi Advocate for accused person.