



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL CASE NO. E009 OF 2020[MURDER]

STATE.....PROSECUTION

VERSUS

NELSON MBILU OKONDA.....ACCUSED

SENTENCE

1. On 15/3/2022, this court delivered judgment, finding the accused person Nelson Mbilu Okonda guilty of the offence of Manslaughter contrary to Section 202 of the Penal Code.
2. The accused was initially charged with the offence of Murder contrary to **Section 203 as read with Section 204 of the Penal Code**. He pleaded not guilty. The court, after considering the Prosecution and defence case found that the Prosecution, despite proving all other elements of murder, they fell short of proving the element of malice afterthought against the accused person beyond reasonable doubt. I therefore convicted the accused person for the offence of Manslaughter contrary to **Section 202 as read with Section 205 of the Penal Code**.
3. The Prosecution indicate that they have no previous criminal record on the accused person hence the accused can be treated as a first offender.
4. In mitigation, Mr. Mshindi advocate for the accused person submitted that the accused is remorseful. He is a first offender. He prays for mercy and leniency of the court. He is the sole breadwinner of his ailing mother. He has faithfully attended court and he cooperated with the court and the police. He prays for a lenient custodial sentence. The accused person also mitigated in his own words saying he was aged 26 years, a casual labourer and he sat Form Four and attained a C- grade. He has not attended any college.
5. The court then ordered for a Presentence report and Victim Impact Statement.
6. The Probation officer, Mr. Milton Kasera has now filed a Presentence Report on 28/3/2022 which reveals that the accused is 26 years old and his parents separated when he was 12 years old. His mother remained elsewhere and her second husband died. The accused was raised by his father and is the first born in a family of four siblings. He however has a strained relationship with his father who claimed that the accused is not his biological son so when the accused went to live with his mother, he got employed as a guard. The deceased was his co-worker as a farm hand. The accused is not married. He is said to be remorseful and humble.
7. The deceased Brown Indimuli was married but separated twice. He was a father of three children. Nothing more is said about the attitude of the deceased's family towards the accused.
8. I have considered the circumstances under which the offence herein was committed. I have also considered the mitigations put forth by the accused person and his advocate. The Presentence Report gives the life history of the accused and the deceased. There is no Victim Impact Statement.
9. The Probation Officer recommends non-custodial sentence.
10. I have considered the fact that a precious life was lost through what appeared to be a fight following disagreements between co-workers. From the evidence adduced, the deceased was in a drunken state and therefore he was not of so much a threat to the life of the accused. The force applied by the accused against a drunken person to stop him being a nuisance was excessive as the accused person strangled the deceased during the struggle. The deceased died as a result of strangulation. Every life is sacrosanct and no person has any right to take away the life of another.
11. Taking into account the remorsefulness of the accused and the Judiciary sentencing Policy guidelines and objectives of sentencing, I note

that in his mitigation the accused through his counsel prayed for lenient custodial sentence.

12. Punishment for Manslaughter is up to life imprisonment. This court however, has discretion, depending on the circumstances under which the offence was committed, to impose a lesser sentence.

13. The accused is aged 26 years old and was employed as a guard. He was guarding property and life as well. He did not offer an absolute self defence or defence of property. I find that a custodial sentence is appropriate for him to be rehabilitated and reform.

14. I hereby exercise discretion and sentence the accused person **Nelson Mbilu Okonda** to serve four years imprisonment, for the offence of Manslaughter, to be calculated, taking into account the days he has spent in remand custody. Upon completion of the prison term, the accused shall serve probation for a period of one (1) year to be counseled on anger management.

15. I so order.

16. File closed.

Dated, signed and Delivered at Siaya this 30th Day of March, 2022

R.E. ABURILI

JUDGE