REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL CASE NO 26 OF 2019

REPUBLIC……PROSECUTOR

VERSUS

EMMANUEL CHERUIYOT ROTICH…..……...…..…ACCUSED

JUDGMENT AND SENTENCE UPON PLEA AGREEMENT

1. Emmanuel Cheruiyot Rotich (then a minor offender) was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal code. The particulars were that on 21st day of October,2019 at Koita village within Bomet East Sub-County murdered Peter Kiplangat Rotich.

2. The Minor offender (now Accused) took plea before Dulu J, on 5th November,2019 and denied the charge. When the matter came up before me for pre-trial directions on 11th November, 2020 the parties communicated to the court that they wished to plea bargain. The matter was adjourned several times before the parties finally filed a plea agreement. Defence Counsel, Mr. Leteipa informed the Court that they had challenges tracing the guardians of the minor as his father was deceased.

3. The Accused's grandfather one Joel Koitagei finally attended court on 12th October,2021 and informed the court that the families of the offender and the victim had conducted traditional cleansing and reconciliation and had forgiven the Accused, and; were ready to receive him back home if released by the court.

4. A duly executed plea agreement was filed on 5th October,2021. The court interviewed the minor offender and guardian to satisfy itself that the minor offender understood the process and had voluntarily executed into the plea agreement.

5. The court accepted the plea agreement. In the information dated 12th October,2021 prosecution charged the Accused with the offence of manslaughter contrary to section 202 as read with Section 205 of the Penal Code. The particulars being that the 21st day of October,2019 at Koita village within Bomet East Sub-County unlawfully killed Peter Kiplangat Rotich.

6. The Accused took plea on 12th October 2021 and pleaded guilty to the charge. The prosecution presented facts as follows: -

> ***"The brief facts are that on 21st October,2019 the accused, the deceased and the deceased's wife were at their home at Koita village, when the deceased and his wife picked a quarrel in their house. The house was in the same compound with that of the accused's parents. The reason for the quarrel the deceased had demanded to know from his wife why the matrimonial bed was wet and the wife had explained that the child had wet the bed. He started beating up his wife who screamed for help prompting the accused to dash to their house to separate them. The deceased's wife managed to escape. The deceased turned to the accused and a fight ensued. It was during the fight that the deceased suffered injury to his head. After the injuries, the deceased children scream and members of the public came and found the deceased lying on the ground. He was rushed to hospital. The accused surrendered to members of the public who escorted him to Longisa Police Post where he was re-arrested by the Police. Investigation commenced. The deceased was declared dead on arrival. The murder weapon was recovered. We shall produce the same. We would wish to produce the Post-Mortem report prosecution. Exh.No.1".***

7. The Accused accepted the facts as true and was consequently convicted of the offence of manslaughter on his own plea of guilty.

8. The court subsequently directed the filing of a Children officer's report as well as a probation officers pre-sentence report both reports were duly filed. Mr. Kones the Children officer while presenting his report, urged the court to direct that the minor offender be taken through counselling.

9. At the sentencing hearing on 16th December,2021, Mr. Leteipa made extensive submissions on behalf of the Accused. He submitted that the Accused was a minor aged 15 years 3 months at the commission of the offence and was now 19 years at the conclusion of the case. He urged that he be treated as a minor. Counsel cited several cases and urged the court to be persuaded to sentence the offender in accordance with Section 191 (i) of the Children Act. He relied on **DCK.V. Republic Criminal Appeal No. 184 of 2009(2014) eKLR; Republic V. Meshack Kibet, Criminal Revision No. E004 of 2021, [2021] eKLR; Daniel Langat Kiprotich State [2018] eKLR, and; Republic V. I.S.O [2018] eKLR.**

10. In addition, counsel urged the court to consider that the following: -

(i) That the accused entered a plea agreement and saved judicial time.

(ii) That the accused was a student and while on bond never breached the bond terms.

(iii) That the accused acted in aid of a vulnerable victim.

(iv) That the families of the offender and the victim had reconciled.

11. On his part Mr. Muriithi for the State submitted that Section 191(i) of the Children Act was applicable when sentencing a person who was a minor at the commission of the offence but had attained majority age at conviction. Counsel also urged the court to treat the offender as a first offender. The offender addressed the court and asked for forgiveness.

12. The purposes of sentencing as captured in the Judiciary Sentencing Policy Guidelines (2014) are: -

1. Retribution: to punish the offender for his/her criminal conduct in a just manner.

2. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

3. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law abiding person.

4. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.

5. Community protection: to protect the community by incapacitating the offender.

6. Denunciation: to communicate the community's condemnation of the criminal conduct.

13. Several authorities have expounded the purposes above. In the often cited case of **Thomas Mwambu Wenyi Vs. Republic (2017) eKLR,** the Court of Appeal citing the Supreme Court decision in **Alister Anthony Pereira Vs. State of Maharastra** stated thus: -

"Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.''

14. In this case, this court was urged to sentence the Accused in accordance with the Children Act since he was a minor at the time of the commission of the offence. In addressing a similar issue, the Court of Appeal in **DKC Republic (*supra*)** laid the principle that a person who commits an offence before the age of majority should be sentenced in accordance with Section 191 (1) of the Act. "but that when dealing with an offender who has attained the age of 16 years, the court can sentence him in any other lawful manner." (Emphasis added.)

The court went further to hold that: -

"Whatever the case, life imprisonment is not provided for under the Children Act, but when dealing with an offender who has attained the age of 16 years, the court can sentence him in any other lawful manner. We think that due to the gravity of the offence, and the current age of the appellant, he cannot be released to the society without being brought to terms with the consequences of his action or omissions by a custodial sentence. It is for this reason that we are inclined to allow the appeal against the life sentence imposed by the trial court and substitute it with imprisonment for a period of 10 years from the date of conviction."

15. In this case the Accused killed his elder brother and has been convicted of manslaughter, a serious felony which carries a maximum life sentence. He is now 19 years and therefore can be sentenced to prison. The facts of the case however disclose unfortunate circumstances. He went to the rescue of his sister in law who was being assaulted by his brother (the deceased) and in an attempt to save her, hit the brother leading to his death. The family of the victim is therefore also the offender's family.

16. A social inquiry report filed by the Children Officer indicated that the Accused was now an adult though still in primary school. It recommended that he be counselled to continue with education. The Probation officer Langat Nelson filed a Probation Report, a Victim Impact Statement and a Reconciliation Report. The first report stated that the deceased and the accused enjoyed cordial relations. The Victim Impact Statement stated that the incident was very traumatizing to the family and that they had turned to traditional cleansing and that the family, including the deceased's wife had forgiven the Accused. In addition, the Probation Officer filed a document titled Customary Family Meeting which summarized the Minutes of a family meeting held on 25/9/2020 in which the family met and decided to forgive the Accused.

17. I have taken into consideration the various reports and in particular the Victim Impact Statement and the submission that the Accused was remorseful and further that the family had reconciled and forgiven him. I have also considered their plea for a non-custodial sentence. I have no doubt, from the demeanor of the accused, that he is remorseful.

18. There is no doubt crime must be sanctioned and punished to deter others from committing similar offences. In this case however, I have given due consideration to the voice of the victims. They have come to terms with the loss. They have demonstrated their intention to rehabilitate and reintegrate the accused through their traditional system to which they willingly subscribe. It is the view of this court that some of the purposes of sentencing earlier stated shall be met. This court in **R.V. Priscilla Cherono Chebet & 2 Others Nairobi High Court Criminal Case No. 65 of 2011**, expressed itself on the need for the criminal justice system to recognize reconciliation thus: -

> ***"It is my considered view that reconciliation ought to be given visible and viable space in the criminal justice system as envisaged by Article 159 of the Constitution. For both the offender and victims, genuine reconciliation brings closure to the loss however heinous the crime committed may have been. Reconciliation is even more critical where both the offenders and the victims are family, relatives, neighbours or friends. It therefore behooves the courts where the circumstances of a case permit, to promote reconciliation alongside penal sanctions. In my view, reconciliation speaks to the humanity of the offender and of the victim(s) while penal sanctions speak to society's condemnation of the offender and the offence and the two ought to work in tandem."***

19. The Accused was in pre-trial custody for one year. He has also saved judicial time by plea bargaining and has expressed remorse. He deserves leniency.

20. The Accused is sentenced to serve 3 years' probation. During the Probation period, he shall show evidence of his continuing education.

21. Orders accordingly.

Judgment delivered, dated and signed this 24th day of March, 2022

……..

R. LAGAT-KORIR

JUDGE

Judgment delivered in the presence of the Accused, Ms. Chepkemoi holding brief for Mr. Leteipa for the Accused, Mr. Muriithi for the state and Kiprotich (Court Assistant).