



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL CASE NO 5 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

KENNETH KIPROTICH LANGAT.....ACCUSED

RULING ON SENTENCE

1. Kenneth Kiprotich Langat (Accused) was charged with the murder of Cosmas Kipyegon Kitur which he was alleged to have committed at Merigi location, Menet sub-location within Bomet County.

2. He denied the charge and his trial proceeded before Muya J. Ongeri J took over the trial at judgment stage and rendered judgment on 3rd August 2020. I took over the case on 28th October 2020, perused the proceedings and judgment and presided over the sentencing hearing on 28th October 2020.

3. At the sentence hearing on 28th October 2020, Mr. Kenduiwo learned defence counsel submitted that the Accused was 34 years old and had a young family and his children were aged 5 and 3 years. That the Accused's wife was a casual labourer and the family was undergoing hardship. Counsel further submitted that the deceased was the accused's father's uncle and that the two families had reconciled and the Accused's family had made reparation to the deceased's family. Counsel submitted that it was unfortunate that the deceased lost his life and that no punishment could bring back that life. He submitted that the Accused was remorseful.

4. The Accused told the court that the person who was taking care of his children was now deceased and the family was suffering as he was the sole breadwinner.

5. On his part, Mr. Mureithi Principal Prosecution Counsel told the Court that the Accused had no previous criminal records and may be treated as a first offender.

6. A pre - sentence probation officer's report was filed on 5th November 2020. In the report, the probation officer stated that he had interviewed the offender, his family members, the area chief and a cousin of the deceased. According to the probation officer's report, the Accused was reported to be a heavy consumer of illicit brew and a person given to violence at the slightest provocation. He was reported to have injured three neighbours in the past. The report further states, in stark contrast to the Accused's submission, that the deceased's family was unhappy with the Accused's family for reason that the deceased's family had not sought them out for formal traditional reconciliation.

7. I have read the trial proceedings, the judgment and the mitigation now on record. The purposes of sentencing are:

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

(ii) Deterrence: to deter the offender from committing a

(iii) similar offence subsequently as well as to discourage other people from committing similar offences.

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

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

(vi) Community protection: to protect the community by incapacitating the offender.

(vii) Denunciation: to communicate the community's condemnation of the criminal conduct.

These purposes are not exclusive in themselves and their application is dependent on the unique circumstances of each case.

8. In this case, the Accused was shown to have armed himself and trailed the deceased whom he stabbed and also stabbed PW1 when he attempted to save the deceased. The court dismissed his assertion that it was the deceased and PW1 who provoked and attacked him. According to the Accused, PW1 and the deceased had gone to his (Accused's) home and threatened to take away his children whom they alleged were sired by the deceased. The court however found **“that there was evidence that the Accused person had been following PW1 and the deceased prior to the attack and PW1 did not know why. There is therefore evidence that in causing death, the accused had malice aforethought as it was something he had premeditated”**.

9. During the sentencing hearing mitigation, neither the Accused nor his advocate revisited the circumstances under which the Accused fatally stabbed the deceased and wounded PW1. The Accused therefore missed an opportunity of bringing out the pathos in the case. As stated by the Supreme court in **Francis Karioko Muruatetu & Another, Supreme Court Petition No.15 of 2015 (2017) eKLR:-**

“ It is during mitigation, after conviction and before sentencing, that the offender's version of events may be heavy with pathos necessitating the Court to consider an aspect that may have been unclear during the trial process calling for pity more than censure or on the converse, impose the death sentence, if mitigation reveals an untold degree of brutality and callousness”.

10. In the final analysis, having taken all factors into consideration, I find the sentence of 20 years' imprisonment appropriate. The Accused shall serve 20 years in prison. The sentence shall run from the date of his arrest and detention being 20th April 2018.

11. The Accused has 14 days right of appeal against both conviction and sentence.

12. Orders accordingly.

Sentence delivered, dated and signed at Bomet this 27th day of January, 2021.

R. LAGAT KORIR

JUDGE

Sentence delivered in the presence of the Accused, Defence Counsel Mr. Kenduiwo, Mr. Mureithi for the DPP, and Kiprotich (Court Assistant).