



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO 54 OF 2017

REPUBLIC.....DPP

VERSUS

GABRIEL MARI GAKUI.....ACCUSED

RULING ON SENTENCE

1. On 26th October, 2020 this Court by the judgment of **Justice C. Meoli** convicted **Gabriel Mari Gakui** (Gabriel) with the offence of murder. Gabriel was found guilty of murdering his cousin, **Anthony Njoroge Gitau (deceased)**. **Justice C. Meoli** was transferred from the Kiambu Court in November 2020 and thereafter the responsibility of considering Gabriel's sentence fell on me.
2. The court by its said judgment found that prosecution's ten witnesses proved the charge of murder.
3. **Gabriel** and the deceased were on 25th November 2017 involved in a fight which began at 7 p.m. The brother of the deceased as he walked home came upon the two fighting and intervene. That brother of the deceased left the two believing the fight was over. Thereafter another member of the extended family, **Margaret Wanjiru Mutogoni** heard the two fighting in her compound. Margaret's husband intervened and dispersed Gabriel and the deceased. Later at 8 p.m. Patrick **Muchuku Kiarie** while walking home to Gaithece noticed a person lying on the ground. On shinning his torch, he recognized the deceased. He noted the deceased was bleeding and was dead.
4. The postmortem report showed the deceased died of a stab wound which led to deceased's suffering collapse of the lung.
5. In the court's view the fight was a continuous transaction with Gabriel being the last person seen in the company of the deceased. The court concluded that deceased was killed by Gabriel and thereby the court proceeded to convicted Gabriel of murder.
6. The pre-sentencing report shows Gabriel is a 30-year-old man. He is unmarried. He was reported to have been abusing alcohol and bhang. He had been taken for rehabilitation for 9 months but relapsed a few years later.
7. The pre-sentencing report noted deceased's family was very bitter over the death of their kin which they associate to family's feud over land. The deceased's mother cried throughout her interview by probation officer over the loss of her son.

SENTENCING

8. It is useful to consider what sentencing of an offender by the court means. This was discussed in the case **R V Pearson 2002 NBQB 218 (canLII)** as follows:

"...sentencing is the public pronouncement of punishment administered by the authority of the court as trustee of the public's confidence. It ought to be imposed in a way that applies the rule of law, tempered with justice, administered with the knowledge, good conscience, instincts and experience of the judge and guided where appropriate by persuasive or binding precedent. In my view, the essential purpose of sentencing is to maintain respect for the law by which society chooses to regulate itself, thereby ensuring the peaceful enjoyment, order and safety of its citizens. The community expects the court to enforce its standards, to denounce unlawful conduct and to deal firmly but fairly with those persons convicted of crime. In determining a fit and proper sentencing, well-recognized principles have come to be applied in this jurisdiction. The primary consideration is always protection of the public. In addressing that primary concern, the sentencing judge is obliged to ask whether such protection may best be achieved by specific deterrence of the offender, general deterrence of those similarly disposed, rehabilitation of the offender, or some combination thereof.

9. I have considered that Gabriel is a single man of 30 years. He has been known to abuse alcohol and bhang. His action led to the death of his cousin. He does not to date admit having committed the offence. He alleges someone else committed it. He is therefore not remorseful. Notably he ran away to his sister's house, in Juja area, on the night in question. This led to the trial court finding that, that was indicative of

guilt.

10. Bearing the above in mind and considering the need for the court to denunciate and deter the commission of criminal offence and also considering the need for Gabriel to be rehabilitated I am of the view the appropriate sentence is of 20 years. **Gabriel Mari Gakui is therefore hereby sentenced, for murder of Anthony Njoroge Gitau (deceased), to serve 20 years imprisonment. That sentence will take into account the period he has been in custody pending this trial in accordance with Section 333(2) of the Criminal Procedure Code.**

SIGNED AND DELIVERED VIRTUALLY THIS 11TH DAY OF FEBRUARY 2021.

MARY KASANGO

JUDGE

11th February 2021

Before Justice Mary Kasango

C/A - Kevin

Accused – Gabriel Mari Gakui

For the Accused – Absent

For the DPP- Miss Kathambi

COURT

Ruling virtually delivered in their presence.

MARY KASANGO

JUDGE