



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL CASE NO 55 OF 2017

REPUBLIC.....DPP

VERSUS

PAUL NJOROGE MAINA.....ACCUSED

RULING ON SENTENCE

1. **Paul Njoroge Maina** (Paul) was convicted by Justice C. Meoli of the offence of manslaughter on 26th October 2020. He is now before me for this sentencing decision. The decision on sentence is before me because **Justice C. Meoli** was transferred from this court in November 2020.

2. The court in convicting Paul made the following findings: that Paul was in the company of his two friends, one of whom was the deceased; they began drinking alcohol on 4th December 2017 from 10.30 a.m.; at 12 p.m. the deceased left, on receiving what seemed like an urgent telephone call; soon thereafter Paul was informed that the deceased was seen entering a lodging place with Paul's girlfriend; since Paul knew that particular lodging he went there and a quarrel and fist fight broke out between Paul and deceased; in the course of that fight the deceased collapsed and became unresponsive.

3. The postmortem report showed that the deceased died from chest injuries due to a sharp force trauma, that is a stab wound. The report noted two penetrating stab wounds as well as soft tissue injuries. The court, by its judgment, found that the stab wounds were inflicted by a sharp object while the soft tissue injuries were as a result of the fist fight.

4. For the purpose of this sentencing a pre-sentencing report was availed by the probation and after care services of Kiambu County.

5. Paul has two other younger siblings. The family, his mother, father and the siblings moved to Juja town in Kiambu county after their move from Kericho, following the post-election violence of 2007/2008.

6. Paul is married with a year-old daughter. His wife and daughter, as well as his parents maintained close touch with Paul for the years he has been in custody while awaiting the conclusion of his trial.

7. In considering the sentence I am guided by what was stated in the **Canadian Case R v Person 2002 NBQB 218 (CanLii)** thus:

*“In his text, **The Law of Sentencing**, Allan Manson writes at page 308:*

For sentencing purposes, the offence of manslaughter can encompass an infinite number of situations, but they all share one characteristic: a death has been caused by culpable homicide. Because the taking of a life is a central feature of manslaughter sentencing, courts will emphasize the roles of denunciation and deterrence. However, rehabilitation and re-integration are relevant especially in the examples of situational killings where the offender presents little or no risk of future danger. Manslaughter sentencing is completely variable and dependent on the circumstances leading to the death, which permits the court to distinguish between degrees of culpability. The offender's background and the existence of mitigating or aggravating factors round out the sentencing matrix, and produce a variety of sentencing that run from the non-custodial to life imprisonment.”

8. There is no doubt that the deceased died following the fight with Paul. It is also clear from the evidence that Paul in going to confront the deceased, because of his association with his girlfriend, Paul armed himself with a sharp object. The court in its judgment determined that no one else but Paul and deceased were involved in the fight which followed the deceased's death. Paul in his defence and even in his interview by the probation officer did not accept that he was indeed so armed.

9. It is useful to consider what the court stated in the case **R -v- Pearson (Supra)**, that manslaughter is something more than a pure accident, but something less than murder. No doubt Paul was provoked by his friend's (the deceased) betrayal of going to a lodging with his girlfriend. It is that anger and betrayal that led Paul to confront the deceased as he did. He however did not confront him with words alone. No. He was armed with a sharp object.

The probation report shows that Paul is very remorseful of his action and that remorse is evident from his actions immediately his friend, the deceased, collapsed. Paul carried the deceased to a shaded area but the deceased succumbed to his injuries.

In sentencing Paul, it is necessary for his sentence to be deterrent and also rehabilitative. I can find no evidence in the actions of Paul on the material date which can lead me to find aggravating circumstances. To the contrary as stated above, it does seem Paul acting on the heat of his anger confronted the deceased but on realizing the deceased had collapsed Paul attempted to help him by taking him to a shed.

10. I am also guided by the supreme Court decision of **Francis Karioko Muruatetu and Another -v- Republic Petition No. 15 of 2015** as follows:

“[71] To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

(a) age of the offender;

(b) being a first offender;

(c) whether the offender pleaded guilty;

(d) character and record of the offender;

(e) commission of the offence in response to gender-based violence;

(f) remorsefulness of the offender;

(g) the possibility of reform and social re-adaptation of the offender;

(h) any other factor that the Court considers relevant.

11. Paul is 31 years old. He dropped out of school to what seems to have been disruptions of the country's post-election violence and the financial challenges of his parents that followed those disruptions. He is trained in driving and at the time of his arrest he was doing casual jobs as well as operating boda boda (motor cycle) to support his family. The probation officer as well as Paul's Learned counsel described Paul as a changed man. That he has changed from a man who was consuming alcohol, which behavior previously led to his conflict with the law. He says his time in remand has turned him around.

12. Bearing the above in mind and because Paul has a young family, which family gratefully has kept in touch with him while he has been in remand but because a life was lost I find that the sentence of 4 years imprisonment is appropriate and it will show society's denunciation of the offence and will be a deterrence to Paul. That prison sentence shall take into account the period Paul has been in custody in accordance with the provisions of 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 – Paul Njoroge Maina – Present

For Accused – Absent

Miss Kathambi for DPP

COURT

Ruling virtually delivered in their presence.

MARY KASANGO

JUDGE