



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO. 11 OF 2010

REPUBLIC

VERSUS

PATRICK MAINA NJERI.....ACCUSED

RULING ON SENTENCE

1. The accused was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; upon a Plea Bargain Agreement dated 17/03/2021 being entered the charge was then reduced to manslaughter;
2. The Plea Bargain Agreement was adopted by the court upon it being satisfied that the accused had understood the contents and that he had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion of any kind;
3. The particulars of the offence were read out to the accused being that he had unlawfully killed his grandmother Martha Wanjiru Kimunyu on the 15th day of March, 2010 at Gatiki Village in Nyeri South Sub-County within Nyeri County; he was then convicted on his own plea of 'Guilty' to the offence of Manslaughter c/s to Section 202 as read with Section 205 of the Penal Code;
4. At the hearing hereof the accused was at all times represented by Learned Counsel Ms Lucy Mwai whereas Mr. Ondimu was the Prosecuting Counsel for the State; both counsel were invited to make submissions before sentencing;
5. In mitigation Counsel for the accused submitted that the accused was a young man aged 31 years and was extremely remorseful for his actions and had learnt that crime doesn't pay; whilst in prison he had studied Theology and undertaken small scale farming; counsel submitted that the accused had a full life ahead of him and prayed that he be given an opportunity to go back to society to utilize his newly found skills and preach good works to his fellow citizens and to make a difference;
6. The accused had spent eleven (11) years in remand and counsel prayed that this period be considered as sufficient time served with no additional period for probation.
7. In response Prosecuting Counsel for the State submitted that the accused was arrested on 16/03/2010 and on the 17/03/2010 the accused recorded a statement and confessed to having committed the offence; the accused was among the first persons who responded to the Plea Bargain sensitization carried out at Nyeri Prison and in accepting it the accused had not wasted judicial time and submitted that this ought to be considered as a mitigating factor; that there were no previous records of the accused and therefore he may be treated as a first offender;
8. The accused had been arrested on the 16/03/2010 and was never admitted to bail and had spent approximately ten (10) years in custody during the pendency of the case; in the circumstances prosecuting counsel was not opposed to the period spent in custody being taken into consideration and was also not opposed to a non-custodial sentence of two (2) years as being an appropriate sentence;

ANALYSIS

9. It is the duty of this court to impose a sentence that meets the facts and circumstances of the case; this court has considered the full circumstances of the offence and from the evidence adduced by PW7 it was apparent that there existed a long standing strained relationship between the accused and his grandmother arising from the utilization of the land; both the deceased and the accused utilized the land and any crops the accused planted would be promptly uprooted by the deceased who also interfered with the rabbits, chicken and goats reared by the accused; despite the intervention of "wazees" being called to arbitrate the deceased persisted in taunting the accused ending with the accused stabbing the deceased who succumbed to the injuries;
10. The applicable law on sentence is found under the provisions of Section 205 of the Penal Code which reads as follows;

'Any person who commits the felony of manslaughter is liable to imprisonment for life.'

11. This court has taken into consideration the aggravating circumstances in that the convict used a stone to commit the offence; he then lied about the whereabouts of his grandmother; when fearing his heinous act would be discovered attempted to commit suicide twice; nonetheless the facts reveal that there was a long standing strained relationship between the grandmother and grandson which led to the unfortunate state of affairs;

12. The mitigating factors taken into consideration by this court are that the accused readily confessed and promptly embraced the Plea Bargaining Concept and thus saved on judicial time; also noted are the personal circumstances of the accused where he has expressed his remorse and is a first offender and that he is aged 37 years and still has a full life ahead of him;

13. In the light of the above factors this court finds that the appropriate sentence would be a term of fifteen (15) years imprisonment; it is noted that during the pendency of this trial the accused had spent a period of approximately eleven (11) years in remand from the date of his arrest; this court directs that this period be taken into consideration and the sentence shall run effective from the date of his arrest which makes him eligible for remission of sentence;

Orders Accordingly.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NYERI THIS 22ND DAY OF APRIL, 2021.

HON. A. MSHILA

JUDGE