



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 72 OF 2015

REPUBLIC STATE

VERSUS

NICHOLAS ATONYE LUSALA ACCUSED

SENTENCE RULING

1. The Accused Person, Nicholas Atonye Lusala, was convicted of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code in a judgment dated 12/03/2020. Evidence established that on the 15th day of May, 2011 at Ahero trading center in Nakuru North District within Nakuru County, the Accused Person murdered James Otieno Osedi (“Deceased”).

2. Through evidence, the Prosecution demonstrated that the Accused Person attacked the Deceased at a bar after he suspected that the Deceased’s friend was having an affair with his (Accused Person’s) girlfriend. The Accused Person attacked the Deceased in a fit of violent and drunken rage, stabbing him once on the left chest.

3. The Court concluded that all the elements of murder had been established in the case and convicted the Accused Person.

4. When the matter came up for sentencing, the Prosecutor, Mr. Jambsumbah, announced that he had no records for the Accused Person and that he may be treated as a first offender. He left the decision on the appropriate sentence to the Court; and had no Victim Impact Statements recorded.

5. On his part, the Accused Person pleaded with the Court for leniency. He said that he is remorseful for his actions which led to the death of another human being; that he was drunk at the time; that he has had plenty of time while in custody to think about his actions; that he has now fully reformed and, among other things, he has stopped drinking now; that he has only one parent left and he hopes to come out and help them out. Finally, the Accused Person told the Court that he is still youthful, at 35 years old, and that he is not married and he hopes the sentence will be lenient enough so that he can come out and have a second chance at having a family. His Counsel, Mr. Ngamate, reiterated the same themes.

6. The maximum sentence for murder is the death sentence. It should be reserved for the highest level murder offence. I am certain the homicide in this case does not rise to that level. While the Court found as a fact that the element of statutory premeditation was satisfied in this case, there was no substantial, orchestrated or intricate planning for the offence. The murder resulted from a spontaneous act of violence. Neither was there evidence that the homicide was committed in a particularly heinous, cruel or depraved manner: the Deceased died of a single stab wound. For these reasons, I am not persuaded that the death penalty is merited in this case.

7. There is one aggravating factor: the post-incident conduct of the Accused Person. He fled the scene of the homicide and ran away from the area for more than four years. He was only arrested when he returned to the region.

8. There are a number of extenuating circumstances in the case. They include the following:

a. He was a first offender;

b. As said above, the offence was not committed in a particularly cruel or depraved manner;

c. The Accused Person was under the influence of alcohol. Even though this was not offered as a defence and it would not have risen to the level of diminishing his criminal culpability, it is a relevant factor to consider in sentencing since it lowered the degree of blame;

d. The homicide did not occur during the commission of another crime; indeed, it was committed in a seemingly spontaneous burst of drunken violence.

9. After considering all these factors, I am persuaded that a custodial sentence of twelve (12) years will be an appropriate sentence for this homicide. I therefore sentence the Accused Person to serve twelve (12) years imprisonment to be computed starting on 28/12/2015 when he was first brought to Court.

10. Orders accordingly.

Dated at Nakuru this 22nd April, 2021

JOEL NGUGI

JUDGE

NOTE: This judgment was delivered by video-conference pursuant to various Practice Directives by the Honourable Chief Justice authorizing the appropriate use of technology to conduct proceedings and deliver judgments in response to the COVID-19 Pandemic.