



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 28 OF 2018

REPUBLIC.....PROSECUTION

VERSUS

WILLIAM KIPKORIR CHIRCHIR.....1ST ACCUSED

GODFREY KIPNG'ETICH KIRUI.....2ND ACCUSED

RULING ON SENTENCE

William Kipkorir Chirchir, 1st Accused, and Godfrey Kipng'etich Kirui, 2nd Accused, are jointly charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. Particulars of this offence are that on the 20th day of May, 2018 at about 10.30hrs at City Park, Parklands in Westlands Sub-County within Nairobi County they jointly murdered Janet Wangui Waiyaki. When this charge was read to both accused persons, each denied committing this offence. They are represented by Mr. Onyango learned counsel. Mr. Solomon Naulikha and Ms Ongweno, prosecution counsel, led the prosecution while Mr. Mbanya appeared for the mother and siblings of the deceased and Mr. G. Kamau appeared for the husband of the deceased.

After hearing a total of 22 witnesses this court made a determination that the offence that has been proved beyond reasonable doubt was that of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. By dint of Section 179 of the Criminal Procedure Code, this court found guilty the 1st and 2nd accused persons guilty of manslaughter and convicted them in a Judgment of this court delivered on 11th May 2021,. Parties were allowed time to prepare for sentencing hearing and the same was scheduled for 13th May 2021.

During the hearing, Mr. Onyango mitigated on behalf of the accused persons. He told the court on behalf of the 1st accused that he is aged 36 years; that the 1st accused is deeply remorseful; that the 1st accused has been in the police service for ten (10) years; that he does not have previous criminal records and that he has tried his utmost to keep good record and serve the country. It was mitigated that the 1st accused has a wife aged 35 years and two children aged seven (7) years and one (1) year respectively; that the 1st accused is the only one who provides for his family including his elderly and sickly widowed mother who suffers from stomach ulcers, arthritis and hypertension; that his mother relies on him for upkeep and medical care; that the 1st accused also takes care of his brother and sister who are unemployed and that he too suffers from acute ulcers that require medication on daily basis. Mr. Onyango urged the court to give the 1st accused a lenient sentence.

On behalf of the 2nd accused, Mr. Onyango told the court that the 2nd accused is 28 years old and has been in police service for six (6) years; that he is married to one wife with two (2) children aged 4 ½ years and one (1) year; that the wife is not employed and relies entirely on the 2nd accused; that he has one parent, 50 year old mother who is terminally ill and who relies on the 2nd accused for medical care and support; that if the 2nd accused is taken away his mother will not survive and that the 2nd accused is deeply remorseful about what happened on 20th May 2018.

It was mitigated for both accused persons that they performed their duties of protecting the country against the breach of peace to the best of their ability; that the circumstances under which the two accused persons found themselves in on 20th May 2018 were not ordinary and that they were required to approach their duties that day in a different way than they usually do under different circumstances.

Mr. Onyango mitigated that the two accused persons took oath of office to do all that is within their power to protect and preserve peace; that they did not have time to weigh the situation and act appropriately and that events happened in a split second with no time to reflect on their actions. Mr. Onyango pleaded for leniency on behalf of the two accused persons submitting that what happened was not intentional. He asked the court to consider that the accused persons stayed in custody for 6 months before they were released on bond and asked for non-custodial sentence. He submitted that a custodial sentence would affect the two accused persons because they might lose their jobs and benefits causing suffering of their families.

Mr. Okeyo for the prosecution submitted that the accused persons did not have previous criminal records and asked the court to treat the accused persons as first offenders. He asked the court to consider the sentiments of the victims in sentencing the accused persons. He

submitted that a life was lost and called on the court to give the accused persons an appropriate sentence.

Mr. G. Kamau for the husband of the deceased submitted that the two accused persons were on duty while the victim was at the park enjoying herself; that her life was brought to an end at an early age and pre-maturely and cannot be brought back; that the deceased left young children aged 12 years, 4 years and 2 years and that the children will grow up without the love of a mother; that the children will always be asking what happened to their mother; that the husband of the deceased lost a life partner and a wife which has completely changed his life; that he has to share the responsibilities of taking care of the children and his business and that her death has brought differences in a family that was always close with this case giving rise to a number of court cases.

Mr. Mbanya submitted on behalf of the mother of the deceased that the deceased left behind her mother, sister and brother and that she was supporting her mother; that the deceased had a business which the mother took over and that they have suffered immense trauma as a result of her death.

I have considered the mitigation of the parties. The circumstances under which the deceased in this case died are clearly stated in the judgment of this court delivered on 11th Mat 2021. I have considered that the penalty for the offence of manslaughter is life imprisonment by dint of Section 205 of the Penal Code that provides as follows: ***Any person who commits the felony of manslaughter is liable to life imprisonment.***

The Judiciary of Kenya Sentencing Policy Guidelines 2016 lists the objectives of sentencing to include punishing the offender in a just manner for the criminal conduct; deterring the offender from committing a similar offence subsequently as well as discouraging other people from committing similar offences; to rehabilitate the offender from his criminal disposition to a law abiding person; restorative justice, to promote a sense of responsibility through the offender's contribution towards meeting the victim's needs and to protect the community by incapacitating the offender.

I am alive that a life has been lost. That is a fact that cannot be changed. There is no amount of punishment that can bring back a life lost. I am also aware of the unfortunate circumstances of the events that led to the shooting that cost the life of the deceased. The two accused persons were on duty on terror related threats. They were not on criminal related activities. The only mistake the two accused persons did was failure to engage extra caution in dealing with the situation facing them and particularly failure to follow the law, specifically the guidelines and rules on the use of force and use of firearms contained in the National Police Service Act (No 11A of 2011) and the Service Standing Orders.

I have considered that the accused persons are first offenders; the number of years they have served the country and the circumstances under which the offence was committed. I have considered their mitigation to this court and their plea for non-custodial sentence as well as the time they spent in custody before they were released on bond. I have also considered that the victims have been heard during sentencing hearing. In the case of **I. P. Veronica Gitahi & another v. Republic [2017] eKLR**, police officers in that case had shot and killed a young girl while they were on official duty. The High Court (Muya J.) found them guilty of manslaughter although charged with murder. On appeal the Court of Appeal stated the following on the issue of sentence:

“The appellants were sentenced to serve seven years imprisonment. The prescribed sentence for manslaughter is life imprisonment. The learned judge made elaborate sentencing notes and took into account the prescribed sentence; the fact that the appellants were first offenders; their personal circumstances and the many years they had served in the police service; the prevalence of cases of unjustified use of lethal force by the police; the victim impact statement by the mother of the deceased; and the fact that the deceased was a young girl. Lastly by a ruling dated 1st December 2014, the learned judge allowed Mr. Ndubi, learned counsel, limited participation in the proceedings as a victim's representative and heard him on the issue of sentence. We are satisfied that the learned judge considered all the relevant factors, as he was duty bound to do. See Felix Nthiwa Munyao v. Republic, Cr. App. No. 187 of 2000. We do not see any basis for interfering with the sentence.”

Given the circumstances of this case and the use of “lethal weapons”, AK 47 rifles in a manner that borders on the recklessness on their part, it is my considered view that a non-custodial sentence is not an appropriate sentence in this case. While considering that life sentence is on the stiff side and given that what life sentence means has not been resolved in Kenya, it is my considered view that a sentence of seven (7) years is appropriate. Consequently, I hereby sentence William Kipkorir Chirchir, 1st accused, and Godfrey Kipng'etich Kirui, the 2nd accused, to serve a prison term of 7 years each. Orders shall issue accordingly. The accused persons are informed of their right of appeal to be exercised within 14 days from today's date.

DATED AND SIGNED BY HON. LADY JUSTICE STELLA N. MUTUKU THIS 26TH DAY OF MAY 2021.

DATED, DELIVERED AND SIGNED THIS 27TH DAY OF MAY 2021 BY HON. LADY JUSTICE JESSIE LESIIT.