



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO. 13 OF 2018

REPUBLIC

VERSUS

JOHN MACHARIA MURAGE.....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 being entered the charge was then reduced to manslaughter;
2. The Plea Bargain Agreement dated 2/06/2021 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;
3. At the hearing hereof the accused was represented by Learned Counsel Mr Makura whereas Ms. Gicheha was the Prosecuting Counsel for the State;
4. The facts as read out by the prosecuting counsel are as follows; the accused unlawfully killed Micheck Wanjohi Muruatutu on the night of 18th and 19th September, 2018 at Gaaki Sub Location, within Tetu Sub-County in Nyeri County;
5. The deceased had leased a parcel of land to the accused; at the homestead of the accused a quarrel ensued from the sale of nappier grass without the consent of the deceased; the accused hit the deceased with a fork cum hoe on the head and he immediately succumbed to injuries; this all happened in the presence of the wife of the accused one Jane Wambui; with the assistance of his wife they dragged the body of the deceased to the point where it was discovered by **PW1**; the clothing worn by the accused was soaked in blood were burnt and the accused fled from his homestead and went to hide in Ruguru where he was arrested; counsel produced the Post Mortem Report (**'PEXh.1'**) and the Mental Assessment Report (**'PEXh.2'**);
6. The accused stated that the facts as narrated were correct and the court proceeded to convict him 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;
7. Both counsel were invited to make submissions before sentencing was passed; in mitigation counsel for the accused submitted that he was extremely remorseful and prayed for justice to be tempered with mercy; the prosecution had no previous records of the accused and that he be treated as a first offender; the accused had been in custody since 2018 and whilst there had learnt a lesson that crime does not pay and had reformed; counsel prayed for a lenient sentence preferably a non-custodial sentence on the grounds that the accused was the family's sole breadwinner, he was also elderly and not of good health.
8. Prosecuting counsel submitted that the prosecution had no previous records of the accused and that he may be treated as a first offender; a life was lost and it was imperative that the family of the deceased receives justice; as for the sentence to be imposed this she left to the court to exercise its discretion.

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 which was a quarrel ensued between the accused and the deceased over the sale of nappier grass without his consent and the accused hit him with the fork cum hoe and the deceased later succumbed to the injuries;
10. The applicable law on sentence for the offence of manslaughter 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. The section provides for the maximum sentence that is life imprisonment; one of the aggravating factors this court has taken into consideration is that the convict used a deadly weapon namely a fork cum hoe in committing the offence; the fork cum hoe is a lethal weapon regardless of which side is used; the other factors are the conduct of the accused after the incident together with his wife attempted to conceal the body of the deceased by dragging it and dumping it elsewhere and they also burnt the blood soaked clothes; and also instead of reporting the incident to the authorities fled his homestead and went into hiding until he was tracked and arrested;

12. The mitigating factors taken into consideration by this court are that the accused readily pleaded guilty at the earliest onset and thus saved on judicial time; secondly, there was evidence of provocation by the deceased because on the material date it was the deceased who went to the accused's homestead to confront him on the sale of the nappier grass and a quarrel ensued leading to the unfortunate state of affairs; this court finds no evidence of premeditation on the part of the accused;

13. In the light of the mitigating factors and being a first offender this court is satisfied that he is not deserving of a life sentence but finds that due to his conduct after the incident a noncustodial sentence would not be an appropriate sentence in the circumstances and finds that a custodial sentence of ten (10) years imprisonment is justified;

14. This court finds no good reason to deny the accused the benefits of the provisions of Section 333(2) and the period the accused spent in custody during the pendency of the trial upto the date of conviction shall be taken into consideration and deducted from the term imposed;

FINDINGS & DETERMINATIONS

15. Having taken all factors into consideration this court makes the following findings and determinations;

(i) The accused is convicted on his own plea of guilty for the offence of Manslaughter;

(ii) The accused is sentenced to a term of ten (10) years imprisonment;

(iii) The sentence shall commence from the date the accused was remanded.

Orders Accordingly.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NYERI THIS 24TH DAY OF JUNE, 2021.

HON. A. MSHILA

JUDGE OF THE HIGH COURT