



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE NO. 9 OF 2018

REPUBLIC

VERSUS

COLLINS ONGERI ORINA.....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 19/04/2021 being entered this 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 accused was charged with having unlawfully killed Abigael Kabura Muchugu on the 14th day of July, 2018 at Chorongi Village within Nyeri County; he was convicted on his own plea of 'Guilty' of 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 represented by Learned Counsel Mr. Muchiriwa Gathoni whereas Ms. Gicheha 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 convict was a young man aged 27 years was an only child and an orphan as his parents had passed on; the victim was his girlfriend and he was extremely remorseful for what had happened; he had been in remand for close to three (3) years whilst in remand he had undertaken religious studies and now sees life from a better perspective;
6. Counsel pleaded for leniency and that the accused was ready to abide with any conditions the court may set; he urged the court to take into consideration the time spent in remand during the pendency of the trial;
7. Prosecuting Counsel for the State submitted that by accepting the Plea Bargain the accused had not wasted judicial time; the aggravating factors were that the deceased was barely in her teens and had a bright future before her life was snuffed out by the accused; nothing justified his actions and that young men should learn to take 'NO' for an answer; the act of girlfriends and boyfriends murdering each other had become prevalent these days; due to the magnitude of the offence and the aggravating factors the accused deserved a custodial sentence;
8. The mitigating factors were the prosecution had no previous records of the convict and that he may be treated as a first offender; that the accused had not wasted judicial time;
9. Counsel left the issue of sentencing to the courts discretion;

ANALYSIS

10. 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 as narrated by the prosecuting counsel and the facts are also contained in the Plea Bargain Agreement;
11. This court has taken into consideration the aggravating factors in the commission of the offence; there was evidence that the convict used a deadly weapon namely a knife to inflict the fatal injuries; the facts reveal that the couple had been engaged in an argument over an allegation that the deceased was involved in a love affair with another man a certain 'Lawrence' which unfortunately turned tragic when the convict stabbed the deceased with a knife who succumbed to the injuries;

12. The mitigating factors taken into consideration by this court are that the accused readily pleaded guilty and thus saved the court on judicial time; also taken into consideration is the age of the convict and that he has also expressed his remorse and is stated to have no previous record and is therefore deemed to be a first offender;

13. The applicable law on sentence for the offence 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.’

14. The offence of manslaughter is punishable by a maximum sentence of life imprisonment; however, the maximum sentence is usually reserved for the worst case scenario; this court has considered the age of the convict that he was a young man aged 27 years when he committed the offence and that he is a first offender and is found not deserving of the life sentence.

15. This court has judicial notice that these kind of offences where girlfriend or boyfriend refuse to walk away from a failed love affair and resort to eliminating the other have become prevalent and meting out a lenient sentence would be setting a dangerous trend; young men and women must learn to accept that love wanes and despite feeling hurt, angry, rejected and heart-broken must learn how to walk away instead of retaliating; in the circumstance a custodial sentence would be an appropriate sentence; In the circumstances this court is satisfied that a term of twelve (12) years imprisonment is found to be justified;

16. In accordance with Section 332(2) of the Criminal Procedure Code this court directs that the period spent in custody during the pendency of the trial be taken into account and be deducted from the term;

FINDINGS & DETERMINATIONS

17. For the foregoing reasons this court makes the following findings and determinations;

(i) A custodial sentence is found to be an appropriate sentence;

(ii) The convict is hereby sentenced to a term of twelve (12) years imprisonment; the period spent in custody shall be deducted from the sentence.

Orders Accordingly.

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

HON. A. MSHILA

JUDGE