



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS CRIMINAL DIVISION

CRIMINAL CASE 38 OF 2018

REPUBLIC.....APPLICANT

VERSUS

WILBERFORCE MAMBALA OUMA.....RESPONDENT

RULING ON SENTENCE

1. The accused was arraigned in court on 3rd July 2018, charged with the offence of; murder contrary to; Section 203, as read with Section 204 of the Penal Code (Cap 63) Laws of Kenya. The particulars of the offence are that; on 15th June 2018, at about 3.00 pm, at Kwangware 56, in Dagorretti Sub- County within Nairobi County, he murdered, Salome Akinyi Omera.

2. Following the mental assessment report, the accused was held to be fit to plead to the charges and consequently, the information was read to him and he pleaded not guilty thereto. However, following subsequently engagement and/or negotiation between the parties on plea bargaining, on 2nd February 2021, the court was informed that, the parties had executed a plea bargaining agreement, and the charges against the accused substituted with a charge of; manslaughter contrary to Section 202 as read together with Section 205 of the Penal Code. The particulars of the offence remained the same.

3. The new charge was read to the accused together with the particulars, and he pleaded guilty to both, whereupon he was convicted on his own plea of guilty. The prosecution told the court that, he did not have any previous record of conviction and treated him as a first offender. The court ordered for a pre-sentence report which was availed.

4. In mitigation; the learned defence Counsel submitted that; the accused was remorseful and has made peace with the family of the deceased. That, he has undertaken several courses at the remand prison and is reformed. The defence prayed for a lenient and non-custodial sentence.

5. However, the learned State Counsel submitted that, a life of an adult was lost in this case, and that the accused should be given a custodial sentence to be rehabilitated on management of his emotions.

6. The above background factual matters have been considered in sentencing the accused. I have in particular considered the circumstances of the offence as detailed vide the facts read to the court and the material facts in the pre-sentence report. In that regard, the following pertinent issues have arisen:

a) Although the incident occurred as the deceased and the accused were engaged in a fight, the accused pulled a knife from the "waist". It is noteworthy that, a knife is not usually and naturally kept at the waist. Therefore, from the facts, it does occur, when the deceased walked out of the

house the first time, the deceased armed himself with the knife., and the question is for what?

b) The facts also reveal that, the accused had taken the deceased's clothes from where she was staying after they separated which caused her to "follow up" on the same and caused her subsequent death;

c) The detailed pre-sentence report reveals that, the mother of the deceased is still "very bitter" and would have nothing less than the accused jailed;

d) The same report indicates that, the deceased left behind two school going children with the younger one, currently in standard seven. They are under the care of their maternal grandmother.

7. I further find that, in a case where a life has been lost, two things must be balanced, justice for the victim's family and proportionate punishment for the accused. While dealing with the same, one cannot ignore the fact that, whereas the accused's life will move on before or after serving the sentence, the loss of life of the victim of crime is permanent loss. Therefore, the pain of the family of the victim cannot be under-estimated. The psychological impact on the children of the deceased can't also be underrated.

8. Be that as it were, the court is live to the fact that, in meting out sentence on a first offender, rehabilitation thereof should be core. The sentence should not be too harsh. However, the sentence passed should be considered in the light of the prevalence of the offence or lack of it. It must aim at protecting the society and deterring other offenders. Further, the seriousness of the offence cannot be overlooked. By virtual of the fact that, the sentence of manslaughter is life imprisonment, speaks to the seriousness thereof.

9. Therefore, having considered all the above factors, and the statutory and sentencing guidelines and/or policy as provided for under the law, I sentence the accused to serve fifteen (15) years imprisonment. The sentence will run from the date of his arrest.

Right of appeal within fourteen (14) days explained. It is so ordered.

DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 23RD DAY OF JUNE 2021.

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms Nyaga for the accused

Mr Naulikha for the Republic

Accused present in person

Edwin Ombuna; Court Assistant