



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO.5 OF 2017

LESIIT, J.

MARSA JAMAL BEKADHAA.....ACCUSED

VERSUS

REPUBLIC.....RESPONDENT

RULING ON SENTENCE

1. The accused, Marsa Jamal Bekadhaa, was first arraigned before this court charged with one count of **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence were:

“On the night of 20th January, 2017 at about 9pm at Kiamaiko Area in Mathare Sub-County within Nairobi County murdered Ali Siba.”

2. The accused pleaded not guilty. After a successful plea bargaining agreement entered on 15th February 2021, the charge was reduced to that of manslaughter contrary to **Section 202** of the **Penal Code**. The court convicted the accused on his own plea of guilty to the lesser charge of manslaughter. The penalty for manslaughter provided under **Section 205** of the **Penal Code** is life imprisonment.

3. Learned Prosecution Counsel, Mrs. Gichuhi, urged that the prosecution has no previous records of the accused and treated the accused as a first offender. I therefore treat the accused as a first offender.

4. I have considered the accused person’s mitigating circumstances given on his behalf by his counsel, Mr. Onyatta. Counsel submitted that the accused is remorseful for the offence. Counsel urged that the accused is a young man aged 22 years and is an orphan. He stated that the accused has been in custody for four years. He urged this court to exercise leniency when sentencing the accused.

5. I have taken into consideration the fact that the accused has pleaded guilty to the lesser charge of manslaughter thus saving this court’s precious time.

6. I have also considered the Probation Officer’s Report filed on 14th June, 2021. Both families of the accused and the deceased were interviewed. The accused’s cousin vouched for the accused as a decent person who has never been in conflict with the law. He stated that he was ready to accommodate the accused in Pangani and support his business. He stated that reconciliation talks between the accused family and the victim’s family were in the process of being initiated.

7. The deceased’s brother was also interviewed. He stated that the deceased had just completed his K.C.S.E examinations, and was awaiting admission to The Kenya Polytechnic University College. The Probation Officer indicated that the deceased’s family was very much affected by the deceased death. The mother of the deceased was tragically affected leading to illness and psychological stress every time the deceased name is mentioned.

8. The deceased’s family are disappointed lot and are aggrieved that the accused’s family were yet to seek reconciliation as dictated by their culture. They decry the accused arrogance at the time of arrest for this offence, at which time he threatened the deceased’s younger brother. The family says they are apprehensive of their welfare if the accused is given a non-custodial sentence.

9. The circumstances of the case are that the on 20th January 2017, at about 8.00 pm, within Kiamaiko area, the accused was seen chasing the deceased while armed with a knife. When the accused caught up with the deceased, he stabbed him on the upper left shoulder which caused the deceased to collapse. He was bleeding profusely. The accused immediately dropped the knife and ran off. The post mortem report revealed that the cause of death of deceased was exsanguination due to neck injuries by a penetrating sharp force trauma.

10. There is no independent information of what caused the attack on the deceased. The accused claims that the two of them had a disagreement over money the deceased owed him, which he declined to pay back.

11. Having considered the accused is a first offender, the four years he has been in custody during the pendency of this case, the fact he an orphan and a young man aged 22 years; considering the report by the probation; It is my view that he should a custodial sentence to give him time to further reflect on his life, and remold his character.

12. I will sentence the Appellant to six years imprisonment to be computed from the date of his arraignment in court. For avoidance of doubt it is to run from 10th February, 2017.

DATED AT NAIROBI THIS DAY OF JUNE 2021

J. LESIIT

JUDGE

DATED AT NAIROBI THIS 22nd DAY OF JUNE 2021

In the Presence of

Mr. Kinyua/Ms Kathomi Court Assistant present

Ms Maina For the State - present

Mr. Onyatta For the Accused - present

Accused present in custody

D.O. OGEMBO

JUDGE

22/6/2021