



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS CRIMINAL DIVISION
CRIMINAL CASE 25 OF 2020

REPUBLIC.....APPLICANT

VERSUS

MULI MUKONZI MATHEMBU ALIAS KALIANDO.....RESPONDENT

RULING ON SENTENCE

1. The accused was initially charged with the offence of; murder contrary to, Section 203 as read together with Section 204 of the Penal Code (Cap 63) Laws of Kenya. The brief particulars of the charge read that, on 10th April 2020, at around 22.00 hours at Mukuru Kayaba Slums, within Nairobi County, jointly with others not before the court, he murdered James Mutua Mutuku.
2. On 11th May 2020, the accused took a plea of not guilty to the charges. However, the parties went into plea bargaining negotiation and on 10th March 2021, the court was informed that, the plea bargaining agreement had been executed by both parties and filed in court.
3. Pursuant thereto, the charges were substituted, wherein, the accused was charged with the offence of; manslaughter contrary to; Section 202 as read with Section 205 of the Penal Code. The particulars of the charge basically remained the same.
4. On 21st April 2021, the new and/or substituted charges were read to the accused and he pleaded guilty to both charge and the facts as read to the court. He was then convicted on his own plea of guilty. On 12th May 2021, the court was informed that, he did not have any previous record of conviction and was thus treated as a first offender.
5. The court then ordered for a pre-sentence report, which was availed on 2nd June 2021. Upon request, the defence was allowed time to consider the same and offer thereafter mitigation. On 16th June 2021, the Learned Defence Counsel Ms Omungala offered mitigation on behalf of the accused to the effect that; he is 29 years old; and is remorseful for what happened. That, he converted and is a Muslim from Christianity. Further, both families have reached an agreement that, he be released unconditionally as he was targeted at the scene, and that, the pre-sentence report recommends a lenient sentence.
6. However, the Learned State Counsel Ms Ogwen, submitted that as the court metes out the sentence it should be membered that, a life was lost and a sentence should be passed that is commensurate to the offence.

7. As a result of the aforesaid, I have considered the following factors in meting out the sentence herein:

- a) *The statutory provisions that guide sentencing;*
- b) *The Judiciary sentencing policy guidelines;*
- c) *The Judicial precedents on sentencing.*
- d) *The accused's previous criminal records, and in particular the fact that he a first offender;*
- e) *The mitigation offered;*
- f) *The circumstances of the offence; and*
- g) *The pre-sentencing report.*

8. Pursuant thereto, the following specific issues are considered:

- a) *The accused is a young person aged 29 years old, single and without a family;*
- b) *He pleaded guilty to the charges and saved court's otherwise limited and/or scarce time;*
- c) *He is a first offender;*
- d) *On the other part, the deceased was aged 42 years, married with three children. He is stated to have been the sole bread winner of his family, of children aged between fifteen to four years;*
- e) *The sentiments in the pre-sentence report are that, the accused and victim's family members have since reconciled and want him "released unconditionally".*

Further, the community spoke positive of him and he is not a risk to the community.

f) However, that I find information is irreconcilable with the pre-bail report filed in court on; 16th July 2020; wherein the victim's family members opposed the release of the accused on bond "due to insecurity and threats received from his accomplices"

9. In conclusion I find that, the offence the accused committed is serious. From the facts as read to the court, the motive of committing such a heinous offence is not clear. It is not described as a robbery incident that resulted in an accidental death. It is an event of an attack with a motive to injure, wound or kill. The pelting of the members of the public with stones to keep them off from assisting the victim compounds it all. This is an offence against the public. It is not against the victim's family alone. Therefore, as much as their sentiments matter, the protection herein is for the public at large.

10. The accused is young. He had no well guided parental responsibility and was exposed to a world of "alcohol abuse" at an early age. As much as he does not deserve a harsh penalty, he requires adequate period of rehabilitation. Unfortunately, for his case, no rehabilitation can be offered outside a prison institution due to his unstable fixed place of abode. In the result thereof, the alternative remains custodial sentence where he can be granted technical training skills to assist him when he is released.

11. The upshot is that; I sentence the accused to serve ten (10) years imprisonment. The sentence will run from the date of his arrest.

Right of appeal within fourteen (14) days, from the date hereof, is explained to the accused.

It is so ordered.

Dated, delivered virtually and signed this 21st day of June 2021.

GRACE L. NZIOKA

JUDGE

In the presence of: -

Accused present

Ms Omung'ala for the accused

Ms Maina for State

Edwin the Court Assistant