



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO. 23 OF 2019

LESIIT, J.

REPUBLIC.....PROSECUTOR

VERSUS

STANLEY NJAU KAMAU.....ACCUSED

RULING ON SENTENCE

1. The accused, **Stanley Njau Kamau**, 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**. He pleaded not guilty.
2. After a successful plea bargaining agreement entered on into 10th March 2020, 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 for the lesser charge of manslaughter.
3. Regarding sentence, **Section 205** of the **Penal Code** provides that persons convicted of manslaughter are liable to imprisonment for life.
4. The Learned Prosecution Counsel, Mr. Naulikha, urged that since the prosecution has no previous records of the accused, he may be treated as a first offender which I hereby do.
5. I have further considered the accused person's mitigating circumstances given on his behalf by his counsel, Mr. Amany. Counsel urged that the accused was a first offender, and was remorseful for his actions. He submitted that the accused was a family man, a God fearing man and a respected member of the community. He urged this court to consider a non-custodial sentence as the accused had reformed.
6. I called for two Probation Officers' Reports. Two were filed. One on 18th June 2021 and the other on 27th July 2021. From these Reports the families of the accused and the deceased were interviewed. In the first report, the accused's brother described the accused as a good person who was law abiding prior to the incident that resulted with the death of the deceased.
7. The wife of the deceased was also interviewed. She told the Probation Officer that the deceased was the sole bread winner of his family and that he is survived by six children, one of who is physically and mentally challenged. The deceased's wife stated that the family is still in pain and is experiencing major financial constraints since the death of the deceased. She stated that the family of the accused had initiated reconciliation talks, but were yet to fulfil the pledge they made to the family of the deceased. She however stated that the family of the deceased does not harbor any hard feelings towards the accused as he had sought forgiveness.
8. According to the first Probation Officer's Report, the family of the accused promised to cede Kshs. 100,000/= that was deposited as cash bail in court, to the family of the deceased with a view of making amends.
9. In the second Probation Report, the Probation Officer Ms. Agnes Otukho confirms organizing a reconciliation meeting welcomed by both the families of the accused and the deceased. The meeting was amicable and fruitful in which the wife of the deceased on behalf of her family forgave the accused. The accused was thankful for the forgiveness. Apart from expressing unreserved forgiveness to the accused, the family of the deceased welcomed payment towards funeral expenses of the deceased be made to them.
10. 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.
11. I have considered that the accused is married with two young children, and is the sole breadwinner. He stated that he was remorseful for his actions.

12. I have considered the circumstances of the offence. The accused had been losing his firewood for some time. On the material day he caught the deceased red handed stealing from him. A fight ensued out of which the deceased was severely injured. Much later that day his wife took him for treatment before he died.

13. It is clear from the facts that the accused was provoked and thus the attack. The attack was however excessive leading to the deceased death. The accused had unreservedly admitted being the one who caused the death of the deceased. This also is evidence of remorsefulness on the accused part.

14. Having considered the circumstances of this offence, the accused's mitigation, the pre-sentence reports, the time spent by the accused in custody pending this case, and the fact that the accused has saved the court's time and resources by pleading guilty to the lesser charge of manslaughter, I am satisfied that the accused can benefit from a Probation Sentence. He has indicated to this court that he is willing to serve a probation such sentence.

15. Having come to the conclusions I have of this case, I order that:

(1) The accused will serve 3 years' Probation term.

(2) The Probation directed to organize Anger Management and Counselling for the accused.

(3) The accused is warned to keep good company and to be of good behavior, not commit any offence during the period.

(4) He should meet all conditions set by the supervising Probation Officer.

(5) If the accused defaults in any of the above conditions, he will be brought back to this court for an alternative sentence.

DATED AT NAIROBI THIS 28TH DAY OF JULY, 2021.

LESIT, J

JUDGE

DELIVERED THROUGH TEAMS THIS 28TH DAY OF JULY, 2021.

LESIT, J.

JUDGE