



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NUMBER 58 OF 2018

REPUBLIC.....PROSECUTION

VERSUS

PAUL MURIMA MBATIA.....ACCUSED

RULING

1. The accused Paul Murima Mbatia was charged with the offence of **Murder contrary to Section 203 as read with Section 204 of the Penal Code**. It was alleged that on the 14th December 2018 at Bahati Scheme in Nakuru North Sub County he murdered Peter Nderitu Mbatia. Plea was taken on the 15th January, 2019 and he pleaded not guilty.
2. On the 27th February 2019 his counsel Mr. Imbwaga informed the court that the defence was interested in a plea agreement. This took a bit of time to conclude. At one point the court fixed the matter for hearing on the 26th and 27th of February 2020. On the 26th February, 2020 the prosecution was not ready for hearing. It was now agreed that the prosecution would respond in three weeks as they had already received the proposal from the defence.
3. Then the Covid 19 pandemic hit us.
4. Finally by 4th June 2021 the plea bargaining had been concluded and parties had agreed that the accused would plead to the charge of **Manslaughter Contrary to Section 202 as read with 205 of the Penal Code**.

“202. Manslaughter

(1) Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter.

(2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.

205. Punishment of manslaughter

Any person who commits the felony of manslaughter is liable to imprisonment for life.”

5. On 4th June 2021 the Plea Bargain Agreement was adopted by the court upon being satisfied that the accused had understood the contents and that he had executed it voluntarily. The accused pleaded guilty to the charge of Manslaughter.
6. The facts as read out by the prosecuting counsel were that 15th December, 2018 at 5.00 p.m. the accused's brother now deceased Peter Nderitu Mbatia was looking for firewood when the accused person confronted him wanting to know why the brother was stealing his property ambushed. A child by the name LW heard him talking to his brother, then heard screams. When she went to look she saw the accused herein stabbing him with a screw driver. She screamed and a neighbour one Joseph Gicheha who heard the screams came and together they rushed the deceased to the hospital where he died while undergoing treatment. His body was taken to the mortuary and report made at Bahati Police Station. The accused was arrested; the screw driver was recovered and he was placed in the cells.

A Post mortem examination was conducted and cause of death ascertained. He was charged with murder.

The prosecuting counsel produced the Screw driver (**'P. Exhibit 1'**) and the Post Mortem Report (**'P. Exhibit 2'**);

7. Upon conviction, Ms. Murunga for the state stated that he was as a first offender as he did not have previous records. The state proposed a sentence of 20 years' imprisonment.

8. Mr. Yogo on behalf of the accused gave the accused's mitigation. That the accused person had, by entering into the plea bargain agreement cooperated with court and he proposed a non-custodial sentence. He submitted that the accused person and his family had reconciled. That the accused person is an old man with children who are dependent on him. He stated that his continued stay in custody was putting his family in jeopardy and he was willing to abide by whatever directions that court would give, and was willing to work on his temperament.

9. The only issue for determination is the appropriate sentence in the circumstances.

10. **Section 137I. of the Criminal Procedure Code** provides;

“Address by parties

(1) Upon conviction, the court may invite the parties to address it on the issue of sentencing in accordance with section 216.

(2) In passing a sentence, the court shall take into account—

(a) the period during which the accused person has been in custody;

(b) a victim impact statement, if any, made in accordance with section 329C;

(c) the stage in the proceedings at which the accused person indicated his intention to enter into a plea agreement and the circumstances in which this indication was given;

(d) the nature and amount of any restitution or compensation agreed to be made by the accused person.

(3) Where necessary and desirable, the court may in passing a sentence, take into account a probation officer's report.

11. I directed that the Probation and After Care Services Nakuru to avail a pre-sentence report on the accused. This was to supplement the submissions by the state and mitigation by the accused in providing evidence to assist the court in determining the appropriate sentence. This is in compliance with **Section 329 of the Criminal Procedure Code** that ***the court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed.***

12. Pre-sentence reports are provided for in the **Probation of Offenders Act Cap 64** and defined as "***pre-sentence inquiry reports***" means ***the reports on accused persons or offenders prepared by probation officers under this Act or any other law in force for purposes of criminal justice administration;***

Section 4 of the Act provides further:

(2) Where any person is convicted of an offence by the High Court and the court is of the opinion that, having regard to the age, character, antecedents, home surroundings health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may, in lieu of sentencing him to any punishment, make a probation order, and may require the offender to enter into a recognizance, with or without sureties, in such sum as the court may deem fit.

(5) Before making a probation order under subsection (1) or (2), the court may consider the view of the victim as contained in the pre-sentence report prepared pursuant to subsection (6).

(6) Where a subordinate court or a superior court considers making a probation order, it shall, before making such order, direct a probation officer to conduct a social inquiry into the circumstances of the case and the accused and make a pre-sentence report of the findings to the court.”

13. The report dated 16th June 2016 was filed with the Probation Officer expressing the view that the accused was not suitable for a non-custodial sentence.

14. This recommendation was despite the mother of the both the accused and the deceased wanting her son back home. It was the finding of the inquiry that the accused has a violent streak that had seen him attack his brother and two of his sisters in law. The local administration and the community are not ready for his return home. They even demolished his house. At 52 he remains unmarried and without children.

15. These violent streaks including the stabbing of his brother were admitted to the Psychiatrist as three (3) previous arrests for attacking three of his sisters' in law. Evidently the accused is a person of a violent temper though he does not suffer from mental illness.

16. In addition the family has an issue with the sharing of the family land which needs to be resolved. The accused complained to the Psychiatrist that his brother the deceased had a habit of harvesting his crops, the fight was over firewood and a footpath. These are issues that

remain live in the family as the other victims the wife and children of the deceased feel unsafe should the accused be released.

17. To quote and paraphrase the Former Chief Justice Hon. Willy Mutunga in his Message in the *Sentencing Policy Guidelines*, *sentencing is perhaps one of the most intricate aspects of the administration of trial justice. It acknowledges that sentencing impacts not just the individual offender but also the community, and indeed the entire justice system. The sentencing process should allow the participation of the victim. It should also infuse restorative justice values and champion the national value of inclusivity by promoting community involvement through use of non-custodial sentences in suitable cases.*

18. Taking into consideration the history of the accused person, the views of the victims and the unstable and unwelcome environment in the family and the community, it appears to me that a non-custodial sentence may not be the best option for the accused at the moment. However, unless the underlying issues within the family are resolved, they will remain a recipe for the commission of more offences.

19. **Section 6 of the Criminal Procedure Code** Provides;

Sentences which High Court may pass

The High Court may pass any sentence authorized by law.

20. **Section 12 provides for Combination of sentences. It states:**

“Any court may pass a lawful sentence combining any of the sentences which it is authorized by law to pass.”

21. In arriving at the appropriate sentence the court is to weigh both the aggravating and the mitigating factors. I have set these out herein above.

22. The Court of Appeal in **Orwochi vs R (1976-1980) KLR 1638** found that the period of twenty one (21) months to be adequate punishment for Manslaughter in circumstances of self-defense.

23. In **HCCRC Number 40 of 2017 Republic vs James Kimosop**. The Court considered that the circumstances of the case of use of excessive force leading to the killing of the deceased who was only armed with a stone called for a custodial sentence. The Court also noted the concurring view of the Probation Officer as to non-suitability of a non-custodial sentence.

24. The Court of Appeal in **V M K v Republic [2015] eKLR**, ten (10) years imprisonment was given for Manslaughter. The court stated as follows;

“As stated earlier in this judgement, there can be no doubt that the circumstances prevailing at the material time would have provoked a reasonable person. Barely an hour after learning of his wife’s alleged rape and robbery by the deceased, the appellant found the deceased seated comfortably in his compound. This was more than sufficient to cause the appellant’s temper to flare up. To add insult to injury, the deceased appears to have been reluctant to leave the premises despite having been ordered by the appellant to do so. The altercation that followed left no time for the appellant’s temper to cool off. Such is the essence of provocation, and the learned trial Judge erred in failing to hold as much. This leaves sentence as the sole issue for determination. It is trite law that save for crimes with mandatory prescribed penalties, sentencing is left solely to the discretion of the court. Such is the case with manslaughter. The respondent had sought that this Court upholds the sentence of 30 years as passed by the trial court. However, considering the circumstances of the case, a sentence of 10 years would in our view suffice.”

25. Taking into consideration the facts of this case and the circumstances leading to the commission of the offence, as well as the mitigation on behalf of the accused and the victim’s family I find this to be a case suitable for a combination of sentences, to take care of the need for the accused to be spent some time in prison to for the offence he committed, for his rehabilitation and also to take into consideration of the issues in the family and community for purposes of reintegration. This will mean that the Probation and After Care Services will continue to work in collaboration with the Prison authorities so that upon his release he will easily transition back to the community.

26. The accused has been in custody since 15th December 2018. He has been in custody for two (2) years and eight (8) months. Any custodial sentence must take that into consideration.

27. The accused person is hereby sentenced to serve **twelve (12) years imprisonment to run from 15th December 2018**. During this period the prison authorities to avail him rehabilitation programs that address his violent anger the cause of his committing these offences. After remission has been taken into consideration, **The last two years of this sentence to be served on probation supervision.**

28. The Deputy Registrar High Court of Kenya at Nakuru to serve this order on the Officer in Charge Nakuru Main Prison, Director Probation and After Care Services, Probation and After Care Services Nakuru for compliance.

Orders accordingly.

Dated, Delivered and signed virtually this 16th Day of August 2021

Mumbua T. Matheka

Judge

In the presence of: (Virtually)

Edna Court Assistant

Accused present

For state: Ms. Mumbe

For accused. Mr. Imbwaga

Mr. S Ndung'u for Probation and after care services Nakuru