



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**HIGH COURT CRIMINAL CASE NO. E095 OF 2019**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DENNIS MUTUGI ALIAS GIKORE ALIAS BABA DENNIS.....ACCUSED**

**JUDGMENT**

1. On the 9/2/2021 when the matter came up for fixing a hearing date, Miss Thuo for the defence indicated that the accused intended to plea bargain with a view to changing his plea by pleading guilty to the lesser charge of Manslaughter. On that basis counsel sought an adjournment to enable a plea agreement be crafted. When the matter was back in court on the 29/06/2021, a plea agreement had been filed, the accused took a fresh plea for the lesser charge admitted the charge and its particulars pursuant to which a plea of guilty was entered and a conviction made. The court then directed that a victim impact report and a presentence report be filed by the probation officer. Both were compiled and filed on the 3/8/2021 and 4/8/2021 respectively.

2. The victim assessment report focuses on the secondary victims as the primary victim died on the spot. The secondary victims were identified as father, mother and brother to the deceased. All say, they have healed have no grudge against the accused, being a relative and a close friend to the deceased, and that the two families have been discussing reconciliation. The parents discount having been dependent upon the deceased who was eking a life as a driver and used earnings for own subsistence. The victim's family say they have moved on, expect no compensation, ritual or any reward and confirms that no bad blood persist between the two families.

3. On the other hand, the pre-sentencing report, stresses kinship by distant blood relationship, that the accused and deceased were friends who worked together and live in the same compound albeit in different cubicles and that the incident occurred during a scuffle while the two were drunk. It further asserts that the accused antecedents before the incident were plausible and the death was the unexpected of him thus recommends that he be sentenced to community service at Kaguma Dispensary.

4. In her mitigation on behalf of the accused, counsel stressed the fact of remorse by the accused and the fact that he pleaded to the offence for which he has been convicted without expending a lot of judicial time. Counsel then told the court that the accused was a student of metal work at Meru National polytechnic and hope to resume the studies and complete the course and be a better and useful member of the community. She thus asked the court to consider the non-custodial sentence proposed by the probation officer and to give regard to the fact that at the time of the incident both the victim and the accused were drunk.

5. The prosecution however opposed non-custodial sentence and urged the court to impose a deterrent sentence on the basis that the accused waylaid, attacked and stabbed the victim severally before proceeding to the police station to make a report of having been assaulted. On the allegation that he was a student, the prosecutor stressed the report by the probation officer to the effect that he had dropped out of studies to become a loader.

6. I have had the benefit of reading the reports, given regard to the circumstances under which the offence was committed and the accused own social circumstances including the fact that is a young man who desires to be integrated into society and wishes to go back and pursue education in metal work coupled with the restored relation between the two families.

7. I have equally taken into account the principle of the sentencing policy that maximum sentence need not be meted out to a first offender <sup>[1]</sup> while bearing in mind that the overriding object of sentencing in criminal prosecution is to protect the society from harmful acts established against the accused but without losing the sight of the need for rehabilitation and assisting the accused, even as a convict, to be a responsible member of the society.

8. I have in addition taken into account the fact that no aggravating facts have been reveal to the court during and after the trial to disentitle the accused to leniency from the court. I note that the report on victim impact and social circumstances of the accused reveal that there is no danger of conflict between him and the deceased family on the basis that both are related and have reconciled thus no danger is posed against

the accused.

9. Having taken into account the two reports, the gravity of the offence and sentence provided by the statute for the offence the accused has been convicted and being aware of the objective goals of Criminal Justice system, I chose to de-emphasize custodial sentence and emphasise the rehabilitation and reintegration of the accused into society so that he is useful to himself, his immediate family and the community he lives in.

10. Taking into account the age of the accused and his social circumstances, I would have imposed a jail term but having taken into account the various factor that influence sentencing including the fact that the prosecution has lasted has lasted some twenty months during which the accused has been in custody, I do convict the accused serve community service for a period of 2 years at Kaguma dispensary. He shall serve the sentence under the supervision of, the Probation office, Imenti Central, Sub-County.

11. It is so ordered

**DATED, SIGNED, AND DELIVERED AT MERU, VIRTUALLY, VIA MICROSOFT TEAMS ON THIS 9<sup>TH</sup> DAY OF AUGUST, 2021.**

**Patrick J O Otieno**

**Judge**

**In presence of**

Mr. Maina for state

Miss Kinyanjui for Njoki thuo for accused

Accused present

Patrick J O Otieno

Judge

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[1] Otieno Vs Republic ( 1983) eKLR