



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

(CORAM: R. MWONGO, J)

CRIMINAL CASE NO. 12 OF 2018

REPUBLIC.....PROSECUTION

-VERSUS-

MOSES KIRIANI KINYANJUI.....ACCUSED

JUDGMENT ON SENTENCING

1. In its judgment of 27th April, 2021, the accused was convicted by this court after being found guilty for manslaughter contrary to **section 205** as read with **section 202** of the **Penal Code**. The court then ordered that a sentence hearing be scheduled when the accused would offer his mitigation. The court also ordered a Probation Officer’s Presentence report to be availed to court at the hearing.
2. At the hearing counsel for the accused filed detailed mitigation submissions, a medical report and an affidavit deposed by the 91-year-old mother of the victim, who is also the grandmother of the accused.
3. In his mitigation the accused, through counsel, recited the facts of the case as found by the court; he pointed out that he is 30 years old and a first offender; that he has a high possibility of reforming; that he is married with a young family and wife; and that his 3 year old son is just about to begin attending school; that he is the sole breadwinner since his wife lost her job in the tourism industry due to the effects of the Covid pandemic; that he is remorseful for the actions that he took; that he had co-operated with the police and prosecution fully; that he was of good character; that he had a drinking problem in the past but since his diagnosis with high blood pressure he has abandoned drink; that he had fractures in his legs and was due for surgery.
4. The accused also availed to court through his counsel a DVD video containing an impassioned plea for leniency of the court. In it he also explains his circumstances, his wife’s support and the fact that he stopped taking alcohol. He states that his young family depends entirely on him and his wife who is presently having challenges keeping the family financially stable due to the impact of the corona virus.
5. In her affidavit the accused’s grandmother says she was speaking on behalf of the entire family and relatives; that had come to terms with the loss of her daughter who died in the unfortunate circumstances stated in court; that she and the family had forgiven the accused; that it would be a double tragedy for the family for the family, having lost one member, to now lose her grandson, the accused, through a jail sentence; that she pleads on behalf of the family that the accused be given a non-custodial sentence so that he could take care of his 3 year old son.
6. The Probation Officer’s pre-sentence Report is as follows in significant aspects:

“.....The family is well known to the area chief. She said that the offender has never been reported for any previous misconduct. The chief said that her office was not opposed to the offender serving a non-custodial sentence. The family is also willing to support him should the court consider him for a non-custodial sentence.

The victim was born in Kiria village in Kiambu County. She was the first born in a family of 7 children. Her father passed on when she was still very young. The family was interviewed. Her mother who is now 92 years old said that she holds nothing against her grandson. She said that the victim had been ailing from blood pressure for some time. The brawl that occurred may have triggered her condition leading to the victim’s death. The siblings who were all present for interview echoed the sentiments and said that it would be a double loss for the family if the offender is incarcerated. The prayed for the court’s leniency towards the offender. All the offender’s siblings were also interviewed. They also said they do not hold anything against him. The offender’s siblings have been supporting him during the trial process and they said that they would accommodate him during the rehabilitation process.

.....

The offender has health challenges. He was diagnosed with blood pressure and is on medication. He also sustained injuries on both his legs and is due for surgery. As noted in the doctor's report the family has been tasked to purchase two surgical implants from an external supplier as they are not available at the hospital. The leg injuries were sustained from a jump over the court perimeter wall when the offender's judgment was read. The offender says that he was overcome by panic as he did not know his fate after he was found guilty. This may have led to the flight response. The offender's family said they had noted he was spending a lot of time alone and was very anxious prior to the date he was due to appear in court. They however did not think that it had a serious impact on the offender.

It was noted that during the trial period the offender was out on bond and he presented himself to court as directed.

A non-custodial sentence will be beneficial to the offender. This is because he will be able to access further medical attention and support from his family.

A non-custodial sentence will further family reconciliation and peaceful co-existence.

From observation, the offender needs counselling therapy for intervention on the risk and need areas identified. This will help him deal with any unresolved psychological issues. Should the court consider him for a non-custodial sentence, he will be attached to a professional counsellor at the County Referral Hospital Naivasha Youth Friendly Department. His family is also in agreement and they are willing to support him on the same. The offender will be closely supervised to ensure that he complies with court orders.

Your Honour, in view of the above findings, I find the offender fit for a non-custodial sentence. I therefore recommend that he is placed on probation for a period of 3 years."

7. I have carefully considered the mitigation of the accused, the family's pleas as presented through the affidavit of the accused's grandmother and the Probation Report. I have also considered the Judiciary Sentencing Policy.

8. The objects of sentencing are as set out in the Sentencing Policy as follows:

"1. Retribution: To punish the offender for his/her criminal conduct in a just manner.

2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.

4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

5. Community protection: To protect the community by incapacitating the offender.

6. Denunciation: To communicate the community's condemnation of the criminal conduct."

9. I have further taken into consideration the fact that the accused was in remand custody for two (2) months before he was released on bond. He attended all court hearings without any hitch. Since conviction, he has been incarcerated for five (5) months from 27th April, 2021.

10. Taking all the foregoing matters into account, I think the appropriate sentence, which I hereby mete, is as follows:

a) The accused is sentenced to a further two (2) months' imprisonment from today.

b) Should he maintain good conduct during that period as shall be certified by the Prisons Officer in Charge, he shall be released to serve a three (3) year non-custodial sentence as follows:

(i) The Probation Officer shall prepare a rehabilitation programme for the accused for the probation period. Such programme shall be shared with the Prisons Service and may be called for by the Court;

(ii) The Probation Officer shall facilitate the accused in effecting or undertaking the probation programme which will include attachment to a professional Counsellor at Naivasha County Referral Hospital;

(iii) Should the accused fall afoul of the law during the Probation Period, he shall be liable to arrest and return to court immediately for review of the sentence by the court. Upon such arrest he shall be held in the medium prison until review.

c) The Prisons Service and the Probation Officer shall respectively maintain a record of the accused person's progress in prison and upon release on probation, which records may be demanded by the court.

Administrative directions

11. Due to the current inhibitions on movement nationally, and in keeping with social distancing requirements decreed by the state due to the Corona-virus pandemic, this Judgment has been rendered through Teams tele-conference with the consent of the parties noted hereunder, who were also able to participate in the conference. Accordingly, a signed copy of this judgment shall be scanned and availed to the parties and relevant authorities as evidence of the delivery thereof, with the High Court seal duly affixed thereon by the Executive Officer, Naivasha.

12. A printout of the parties' written consent to the delivery of this judgment shall be retained as part of the record of the Court.

13. Orders accordingly.

DATED AND DELIVERED IN NAIVASHA BY TELECONFERENCE THIS 30TH DAY OF SEPTEMBER, 2021.

R. MWONGO

JUDGE

Attendance list at video/teleconference:

1. Ms Maingi for the State
2. Mr. Karanja for the Accused person
3. Moses Kiriaini Kinyanjui at Naivasha Medium Prison
4. Court Assistant - Quinter Ogutu