



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

(Coram: Odunga, J)

CRIMINAL CASE NO. 89 OF 2010

REPUBLIC.....PROSECUTOR

-VERSUS-

ROBERT KIILU WAMBUA.....ACCUSED

SENTENCE

1. On 11th march, 2020, this Court found that the prosecution proved that the accused herein on 22nd December, 2010 at Kiliku Village, Kayatta sublocation, Kyanzavi Location in Matungulu District within Machakos County, the accused murdered **Isaac Musyimi Kimote** and convicted him accordingly.
2. Thereafter the Court directed that a pre-sentence report be prepared.
3. According to the said report, the deceased and the accused, who is aged 42 years, were friends prior to the incident and the accused had lent the deceased some money to buy alcohol. In fact, on the day of the incident, the due enjoyed drinks together. However, a disagreement ensued when the accused demanded that the deceased repay him his money at which point the deceased slapped him and the accused rushed home, armed himself with a *jembe* stick, waylaid the deceased causing him the fatal injuries.
4. According to the report the offence was due to drunkenness, drug and substances abuse, poor anger management and lack of alternative dispute resolution mechanism. Before his arrest the accused was taking care of his wife and two children. The report indicates that the accused as described by the community as a hardworking person who interacted well with the community members though he was smoking bhang and was drinking alcohol. According to the report, the accused's family are willing to resettle him while the deceased's family are not hostile to him though the community is of a divided opinion. It was indicated that there had been reconciliatory talks between the two families but the same had initially broken down due to the failure by the accused to honour the agreement on compensation but the family of the deceased was still open to the talks in line with Kamba traditions and customs. There, however, was no hostility from them.
5. According to the report, the accused requires intervention to address the issue of drug and substances abuse, anger management and alternative dispute resolution.
6. Before me it was submitted that the accused is remorseful and has undergone reform while in prison. Counsel for the accused also relied on the said report and prayed for a non-custodial sentence in light of the fact that the accused was taking care of his family. On the art of the prosecution, it was submitted that the court ought not to lose sight of the fact that a life was lost.
7. I have considered the mitigating circumstances. Though the probation report indicates reconciliatory steps had been initiated, it seems that at some point the same broke down. It is not clear whether they were revived and how far they are. There is a document that has been placed on record but the same is written in a language unknown to me hence is not useful to the court. There is also no report from the prison indicating the accused's conduct during the 11 years he has been in prison. Considering the attitude of some of the members of his community and the incomplete reports placed before me, I am not satisfied that the accused should be released back to the society as yet.
8. I am however cognisant of the fact that the family of the deceased does not harbour any vengeful attitude towards the accused.
9. In the circumstances, I sentence the accused to 20 years in prison. The said period shall run from 5th January, 2011. Upon his release from prison, he shall be on probation for a period of 3 years while undergoing rehabilitation.
10. It is so ordered.

JUDGEMENT READ, SIGNED AND DELIVERED IN OPEN COURT AT MACHAKOS THIS 27TH SEPTEMBER, 2021.

G V ODUNGA

JUDGE

In the presence of:

Mr Muthama for the accused

Mr Ngetich for the State

CA Martha