

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE NO. E008 OF 2021

CORAM: HON. R.E. ABURILI, J

STATE.....PROSECUTION

VERSUS

MAVIN ORIDO OTIENO.....ACCUSED

JUDGMENT

1. The accused person Mavin Orido Otiemo was on 29/7/2021 convicted on his own Plea of guilty for the offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.
2. This was after signing a Plea bargaining agreement with the Prosecution who reduced the initial charge of Murder contrary to section 203 as read with section 204 of the Penal Code, to that of Manslaughter contrary to section 202 as read with section 205 of the Penal Code.
3. This court then heard mitigation from the accused and his advocates Mr. Mshindi upon which it called for a Victim Impact Statement and presentence reports.
4. The said report has been filed into court on 10/9/2021. The court has considered the said report signed by Mr. Kasera, Probation Officer. The Social Inquiry report shows that the deceased's family do not wish to file any victim impact statement as they do not wish to be associated with the accused person herein who strangled to death his own grandmother and guardian. The report also discloses that the accused who strangled his paternal grandmother who was also his sole guardian after his parents died, is a person of criminal tendencies and character in the community and that he has previously faced a capital robbery offence but witnesses refused, to go and testify so he was acquitted. That he belongs to some criminal gang in Alego and Gem and they terrorize citizens, stealing from them.
5. The accused also abuses alcohol. His paternal grandfather has disowned him completely and there is a great risk that if he is seen in the area he will be lynched by the community.
6. The accused pleaded for lenient sentence. He is 28 years old. His wife, according to the Probation Report, left him before the offence herein was committed. They had one child. He regrets the offence. He has learnt from prison that crime is not good. He plants trees, which he intends to plant more and will educate the society on what is good and bad, given the opportunity to serve non-custodial sentence.
7. In the Plea bargaining agreement dated 26/7/2021, the Prosecution sought for a minimum custodial sentence of 15 years imprisonment. The defence on the other hand proposed not more than 10 years imprisonment.
8. Having considered all the above, and the circumstances under which the offence herein was committed, with the accused strangling the deceased who was his old grandmother and guardian, and the mitigation and Social Inquiry Report together with the Judiciary Sentencing Guidelines, I am satisfied that the accused deserves custodial sentence for him to be rehabilitated and reformed before he can be released back into the community..
9. Upon conviction under Section 205 of the Penal Code, sentence is up to life imprisonment. However, as the accused has Plea bargained and saved the court time and resources of calling witnesses to testify, and taking into account his age and social antecedents, I hereby exercise discretion and sentence the accused person Mavin Orido Otiemo to serve eighteen (18) years imprisonment to be calculated from the date of his arrest, taking into account the provisions of Article 50(2)(p) and Section 333(2) of the Criminal Procedure Code, to accord the convicted accused person a less severe sentence.
10. This file is now closed.
11. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 28TH DAY OF SEPTEMBER 2021

R.E. ABURILI

JUDGE