



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCRC NO.163 OF 2017

FORMERLY MACHAKOS HCCRC 5 OF 2016

REPUBLIC.....PROSECUTION

-VERSUS-

DANIEL NZIOKA MBOTE.....ACCUSED

RULING ON SENTENCE

1. The accused herein has been convicted of murder contrary to section 203 as read with section 204 of the Penal Code.
2. Before pronouncing sentence, two pre-sentence reports prepared by the Probation Officer Makueni, Rosemary Mwalewa dated 16th July 2021 and 20th September 2021 respectively were filed in court.
3. On 28th July 2021, the Prosecuting Counsel Mr. Kihara informed the court that the family of the deceased were not happy with the pre-sentence report dated 16th July 2021 as the Probation Officer had not taken into account the views of the deceased's family. Thus the court ordered the filing of another pre-sentence report.
4. Thereafter, before this court could consider sentence, the accused filed an application dated 2nd September 2021 to be released from custody to attend medical treatment, which was also backed by a letter from Makueni G.K Prison.
5. After receipt of the 2nd pre-bail report, on 22nd September 2021, the Prosecuting Counsel Mr. Tanui informed the court that the accused was a first offender.
6. Mr. Hassan who appeared for the accused on his part, in mitigation stated that the accused being a first offender was also the bread winner of his family and that he had 3 children, two of whom were in boarding school and relied on him for school fees. Counsel also informed the court that the accused cared for his aged parents, and that he was remorseful, regretful, and had also reformed. Counsel further stated that the accused had been involved in a road accident, fractured his leg and lost eleven teeth and had an implanted metal plate in his left leg and arm and thus required special medical treatment. Counsel lastly, asked for leniency and non-custodial sentence as the families of the deceased and the accused had reconciled.
7. In response, Mr. Tanui submitted that the court should consider an appropriate sentence, and urged the court to take into account the pre-sentence reports as the views of the deceased's family had now been taken into account in the pre-sentence reports.
8. I have perused the judgment which was written by Ong'udi J, and I only delivered it. I have perused the two pre-sentence reports and attachments thereto. I have also considered the mitigation of counsel and I have seen the conduct of the accused person in court who interjects in proceedings, even when he is represented by counsel, and have noted the contents of the application for release from prison custody to attend medical treatment.
9. The accused person is a first offender. He is middle aged and has children. He got married to another wife in 2020 after the death through his hand, of his wife, and while he was still on trial from 2017. His counsel has pleaded that he is remorseful and that the two families have reconciled. He has asked for a non-custodial sentence. Accused has a biological child with the deceased, and two children of the current wife born prior to their marriage. The Prosecuting Counsel has asked this court to consider the pre-sentence reports filed.
10. In sentencing, the courts have to take into account the gravity of the offence and the circumstances of the offence, as well as mitigating circumstances.

11. Though the version that the accused gave to the Probation Officer was of one stab wound on his wife (the deceased), the trial Judge narrated the injuries at paragraph 52 of the judgment to be four (4) stab wounds on the right of the neck, cut wound on anterior region of the neck, slit neck which was open, two stab wounds on the right side of chest, fractured 6th rib, stab wound on scalp, right occipital region, blood clots in the chest and 6th rib and severed major vessels, which take blood to the head.

12. With regard to the reconciliation of the two families, the commitment agreement dated 16/8/2021 was signed by the accused, a witness and Probation Officer, but no member of the deceased family. In my view, the Probation Officer who prepared the pre-bail report should never have signed that agreement, as she should have been a neutral person, and the commitment should have been signed by a member of the deceased family.

13. On the application for release to attend treatment from outside prison, I would have said nothing about it but since counsel for the accused has mentioned the accused's injuries meant to be treated outside prison custody, I will say that the letter from G.K Prison Makuani in support of that application in my view is irregular, as there is no evidence that the Commissioner of Prisons authorized the writing of that letter.

14. Having taken into account the gravity of the offence, injuries causing death, and the circumstances of this matter, and the mitigation, and guided by the reasoning in the Supreme Court decision in the Muruatetu case, I sentence the accused person herein to thirty (30) years imprisonment. The prison authorities will of course provide medical attention to him just as much as they provide to other prisoners.

Right of appeal explained.

Delivered, Signed & dated this 23rd day of September 2021, in open court at Makuani.

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George Dulu

Judge