



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO 31 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

PETER KIONGO MUNGAI.....ACCUSED

SENTENCE RULING

1. Peter Kiongo Mungai (the “Accused Person”) was originally charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He was accused of killing, with premeditation, Mary Wairimu Mungai on the 29th day of December, 2013 at Gichobo Location in Njoro sub-county within Nakuru County.

2. The Accused Person pleaded not guilty to the charge of murder and trial commenced. The Prosecution called seven witnesses. Before the Prosecution could close its case, the parties negotiated a plea agreement.

3. By a Plea Agreement dated 17/02/2020, the Accused Person pleaded guilty to the charge of manslaughter contrary to section 202 as read together with section 205 of the Penal Code. After due caution, and after satisfying myself that the Plea Agreement was entered into knowingly and voluntarily, I recorded a conviction and called for pre-sentencing report and victim impact statements (if desired) and set the case for a sentencing hearing.

4. The agreed facts of the case are laid out in the Plea Agreement as follows:

That on the 29th December, 2013, the Accused Person had a quarrel with the Deceased who was his sister.

The Accused Person then, without justification, proceeded to kill the Deceased and placed her body on her bed, put a rope around her neck and then covered her with a blanket.

The Accused Person locked the Deceased in the house and called the other sister and other relatives and informed them what he had done. The Accused Person was later arrested and charged with murder.

5. The Prosecution filed a Victim Impact Statement. The Statement claimed that the family of the Deceased was quite traumatized by the death; and implied that they wished for a custodial sentence. The statement states that there has been no efforts at reconciliation and that the family was generally hostile to the Accused Person.

6. However, during the sentence hearing, two members of the family showed up and radically challenged the Victim Impact Statement. Margaret Wambui Mungai, the mother to the Deceased and the Accused Person, begged the Court to release the Accused Person on non-custodial sentence. She told the Court that the Accused Person was her sole help in her old age; and further that he is the only one who will take care of the children of the Deceased. She told the Court that she is really suffering to fend for the three children of the Deceased; and further that the Victim Impact Statement was sourced from a brother to the Accused Person who does nothing to help her or the children of the Deceased.

7. Margaret Wambui, the first born daughter of the Deceased also addressed the Court and largely associated herself with her grandmother’s sentiments. She told the Court that it is only the Accused Person who supports them and now that their mother was Deceased, their only hope in pursuing educational opportunities was if he was back home with them.

8. Both the mother and the child of the Deceased stated that while they regretted the death of the Deceased, they accepted that the circumstances leading to the death were not premeditated by sudden act of violence caused by anger. They indicated that the Accused Person had asked for forgiveness, and that they had readily forgiven him. Both were passionate in requesting for a non-custodial sentence

and took time to explain to the Court the adverse impact of the continued incarceration of the Accused Person on their lives and the lives of the other two children of the Deceased.

9. In mitigation, the Defence submitted that the Accused Person is remorseful; and that he had taken steps to reconcile with the rest of the family. The Probation Report filed in Court is quite favourable to the Accused Person.

10. The Defence submitted that the Accused Person did not intend to cause the death of the Deceased; and that he was a father of three children and the sole bread winner of the family. The Defence also noted that the family of the Deceased was not opposed to the Accused Person being released on probation. The Defence pleaded with the Court to impose a non-custodial sentence as recommended in the Probation Report. The Accused Person pledged to take care of the three children left behind by the Deceased. He also indicated that he had time to reflect on his actions during the last six years that he has been in remand; and that he is now a changed man.

11. I have considered the following relevant factors in fashioning an appropriate sentence for the Accused Person in this case:

- a) The Accused Person pleaded guilty to the reduced charge of manslaughter and therefore saved the family the anguish of having to testify and also saved much judicial time.
- b) The Accused Person appears to be genuinely remorseful and is committed to pursuing reconciliation with the family.
- c) The family of the victim has indicated that they are strongly in favour of the Accused Person being released on non-custodial sentence.
- d) The Accused Person is a first offender.
- e) The Probation Report is favourable and recommends non-custodial sentence which, it says, will provide an opportunity for the Accused Person to be rehabilitated.
- f) The circumstances of the crime do not point to a planned, depraved, or violent conduct on the part of the Accused Person which should attract societal opprobrium or disapproval in the form of a prison sentence.
- g) The Accused Person has pledged to take care of the three minor children of the Deceased.

12. Given all these factors, I have concluded that the circumstances of this case do not call for a custodial sentence and that no sentencing objective will be achieved by the continued incarceration of the Accused Person who has been in custody since 28/04/2015. I, therefore, sentence the Accused Person as follows:

- a. to imprisonment term equal to the term he has been in remand;**
- b. to a Probation Sentence for a period of three years; and**
- c. to pay, as restitution for his offence, the subsistence and educational needs of the three children of the Deceased until the children turn twenty-one (21) years old.**
- d. For avoidance of doubt, the favourable sentence imposed under (a) and (b) above is conditional on the Accused Person adhering to the sentence imposed under (c). If the Accused Person fails to comply with that order, the Court will be at liberty to re-sentence him as appropriate.**

13. Orders accordingly.

DATED AND DELIVERED AT NAKURU THIS 16TH DAY OF DECEMBER, 2021

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JOEL NGUGI

JUDGE

NOTE: This judgment was delivered by video-conference pursuant to various Practice Directives by the Honourable Chief Justice authorizing the appropriate use of technology to conduct proceedings and deliver judgments in response to the COVID-19 Pandemic.