



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO 19 OF 2016

REPUBLIC.....STATE

VERSUS

ROBERT KIKWAI KIBET.....ACCUSED

RULING SENTENCE

1. Robert Kikwai Kibet (“Accused Person”) was originally charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. It was alleged that on the 9th April, 2016 at Arorwet Village in Kuresoi District within Nakuru County he murdered Josephat Chirchir (Deceased).

2. The Accused Person pleaded not guilty and the case proceeded for full hearing. The Prosecution called five witnesses. At the conclusion of the Prosecution case, the Learned Judge Maureen Odero ruled that the Accused Person had a case to answer and placed him on his defence.

3. I took over the matter at that point. Shortly thereafter, the Accused Person and his lawyer elected to enter into a plea agreement. By a Plea Agreement dated 08/07/2019, 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 10th day of April, 2016, the Accused Person and one Bernard K, Langat engaged in a fight over some payment which the Accused Person was demanding from his employer for services he had rendered.

The Deceased intervened and tried to separate the duo but in the process the Accused Person inflicted upon him [Deceased] a fatal injury.

5. Mr. Chigiti, the Prosecutor, confirmed that the Accused Person is a first offender. However, he indicated that the Prosecution recommended seven years imprisonment in the Plea Agreement because the Accused Person mercilessly attacked the Deceased using a dangerous weapon – a knife – in circumstances when it was wholly unnecessary and excessive.

6. In mitigation, Mr. Ochang’ counsel for the Accused Person, submitted that the Accused Person is remorseful and has been in custody for more than five years. During that time, Mr. Ochang’ submitted, the Accused Person the Defence pointed out the Accused Person is extremely remorseful; and that he has had time to reflect on his actions in the last five years while in Prison. In those five years, he has reformed and has become an active Christian. Mr. Ochang’ pointed out that it was a misperception to call the circumstances in which the Deceased died as “merciless” killing by the Accused Person.

7. At my request, the Probation Department filed a Pre-sentence Report. The Report is quite favourable to the Accused Person. Among other things, the Report confirms that the clan elders of both families have met for reconciliation talks and are “willing to initiate Kalenjin traditional reconciliation system to achieve harmony between the two families....[they] have initiated the traditional justice system....and wish to avoid the issue of double tragedy affecting the two families.” The Report concludes that the Local Administration officials confirm that the community does not harbor any animosity towards the Accused Person and that they are ready to receive him back in the society. The Report highly recommends non-custodial sentence.

8. 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 much judicial time.
- b) The Accused Person appeared to be genuinely remorseful.
- c) The Accused Person has initiated, through his clan, reconciliation efforts which will lead towards healing of the two families;.
- d) The Accused Person is a first offender.
- e) The Probation Report is quite 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 been in custody since 14/04/2016; and
- h) The Accused Person appears to have taken the opportunity of being in custody positively and used it to reform. As such his capacity for reform is high.

9. Given all these factors, I have concluded that the time the Accused Person was in custody is enough custodial sentence. I therefore sentence the Accused Person to the custodial term already served plus a Probation Sentence for a period of three years.

10. Orders accordingly.

Dated and Delivered at Nakuru this 27th day of February, 2020.

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JOEL NGUGI

JUDGE