



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 10 OF 2012

REPUBLIC.....STATE

VERSUS

ROBERT KIPKORIR NGENO.....ACCUSED

SENTENCE RULING

1. The Accused Person, Robert Kipkorir Ng'eno, was convicted of manslaughter contrary to Section 202 as read with Section 205 of the penal Code. He was found guilty of the unlawfully killing Evans Kiprotich Martim (Deceased) on the 14th day of February, 2012 at Mlango Village in Kuresoi District within Nakuru County.

2. The conviction came after a fully-fledged trial in which the Accused Person had been charged with murder which he denied. The Court ultimately found that the crucial element of malice afore-thought had not been proved to warrant a murder conviction but convicted the Accused Person of the lesser but cognate offence of manslaughter.

3. The judgment captured the circumstances in which the killing took place in the following words:

I, therefore, accept the Confession as voluntarily given; and as reflective of what happened on 14/02/2012. If I do so, however, since there is no competing narrative, I have to accept the narrative as told by the Accused Person therein. That narrative is that it was the Deceased who attacked the Accused Person, punched him and attempted to stab him with a knife. This triggered a defensive reaction by the Accused Person who grabbed the knife and used it to stab the Deceased several times.

4. The present task is to determine the appropriate punishment for the Accused Person.

5. The Prosecution and the victim's family submitted a Victim Impact Statement. In it they call for a stiff custodial sentence. The family of the Deceased wanted the Court to consider that:

- a. The Deceased was the only working member of the extended family and that he took care of his mother and younger brother;
- b. They are quite traumatized by the cruel manner in which the Deceased was killed – especially the fact that he was stabbed very many times;
- c. They resent the attitude of the Deceased who, they say, has been boasting in the village that because of the money he has he could buy good legal representation to ensure that he does not spend even a day in Court;
- d. The Accused Person has never bothered to express remorse to the family of the Deceased or in any way seek reconciliation. On the contrary, they say, he has been telling anyone who would listen that he will not go to jail for his actions; and
- e. The mother of the Deceased is so severely traumatized that she fell ill and has even lost ability to coherently communicate due to the cold-blooded killing of her son on whom she relied for survival.

6. Ms. Odero, the Prosecuting Counsel, submitted that all considered, a sentence of thirty years imprisonment was appropriate.

7. Ms. Njeri held brief for Morintat with instructions to submit mitigation on behalf of the Accused Person. She submitted that the Accused Person was remorseful for what happened and that, contrary to the feelings of the family of the Deceased, was very apologetic. She submitted that the Accused Person never intended to kill the Deceased but only acted in self-defence. The Accused Person is a first offender;

and is the only bread winner in a family in which he has two wives and six children who are all young. Ms. Njeri prayed the Court to consider non-custodial sentence so that the Accused Person can continue taking care of his family.

8. Sentencing is an individualized process where I am required to consider all the mitigating and aggravating circumstances as applied to the specific circumstances of the case in order to fashion an appropriate sentence that is fit to the offence and circumstances. I have considered the following four mitigating factors in the present case:

- a. *First*, the Accused Person is a first offender.
- b. *Second*, the Accused Person was not the aggressor although he responded with unjustified, and, admittedly excessive, deadly force.
- c. *Third*, the Accused Person expressed remorse – although the family of the Deceased doubted the sincerity of the remorse given what they describe as resentful conduct in the village.
- d. *Fourth*, I have also considered the fact that the Accused Person has a young family which depends on him as a mitigating factor.

9. These mitigating factors must be balanced with aggravating circumstances to arrive at an appropriate sentence. I have considered the views of the family of the victim as outlined above. I treat them, for sentencing purposes, as aggravating circumstances. I have also considered the impact of the death on the family of the Deceased as well as their sense of justice as factors.

10. One weighty aggravating factor in this case is the fact that the Accused Person stabbed the Deceased at least eight times. According to the autopsy report, the stab wounds were everywhere on the body of the Deceased: The Report showed that the Deceased had stab wounds to the back of the left shoulder; two stab wounds on the left side of the trunk; a stab wound just above the buttocks; and stab wounds on the right arm; left arm and right inner thigh.

11. These stab wounds are extremely disturbing. They create the impression of a man bent on dispatching the Deceased to the hereafter. Indeed, one might conclude that the Accused Person is extremely fortunate to escape a verdict of murder.

12. In this case, I have come to the conclusion that a custodial sentence is merited given the circumstances which I have outlined above as the only suitable way of expressing society's condemnation of the Accused Person's conduct or deter similar conduct in the future. Having noted the family's views and having considered all the mitigating circumstances, I am of the view that a custodial sentence of three-and-a-half years is the appropriate sentence.

13. Consequently, a fit sentence that properly balances the mitigating circumstances with the aggravating circumstances is a sentence of three-and-a-half (3.5) years imprisonment. Accordingly, I sentence the Accused Person to three-and-a-half (3.5) years imprisonment. The term of imprisonment shall be computed starting on 27/05/2020 when the Accused Person was taken into custody.

14. Orders accordingly.

Dated and delivered at Nakuru this 28th day of May, 2020

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JOEL NGUGI

JUDGE

NOTE: This judgment was delivered by Video-conference facility pursuant to the various Directives by the Honourable Chief Justice asking Courts to consider use of technology to deliver judgments and rulings where expedient due to the Corona Virus Pandemic. This resulted in Administrative Directives dated 01/04/2020 by the Presiding Judge, Nakuru Law Courts authorizing the delivery of judgment by video-conferencing. This avoided the need for the participants to be in the same Court room for the delivery of the judgment. The Accused Person attended by video-conference from Prison while the Prosecutor, Ms. Vena Odera, and the Court Assistant were in attendance by video-conference set up at the Court's Boardroom. Representatives of the media were able to access the proceedings by watching at the Court's Boardroom. Accordingly, the proceedings met the constitutional requirement of public hearing.