



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA NAROK**

**CRIMINAL CASE NO. 9 OF 2018**

**REPUBLIC..... PROSECUTOR**

**VERSUS**

**PHILIP KIPLANGAT TOWETT.....ACCUSED**

**JUDGMENT ON SENTENCE**

1. The accused stands convicted of manslaughter. The issue before me is to decide upon the appropriate sentence that should be imposed upon the accused.
2. In considering the appropriate sentence to be imposed, the court is required to consider the circumstances of the offence which include the aggravating and mitigating factors
3. Ms Torosi for the prosecution told the court that the accused is a first offender. She urged the court to take into account the injuries inflicted upon the deceased in meting out the appropriate sentence. Furthermore, she also urged the court to take into account that a life has been lost. Additionally, she urged the court to take into account that the deceased was in his early 20s in terms of age. Finally, she urged the court to impose a deterrent sentence.
4. Ms Rebecca Kudate, counsel for the accused mitigated on behalf of her client as follows. The accused killed the deceased in answer to a distress call from Pw 1, who was under attack by the deceased. The deceased wanted to rape Pw 1 and had inflicted an injury in her head.
5. The accused is a first offender and had been a law abiding citizen until this incident. The report of the probation officer, indicates that the accused had cordial relationship with family members and the community.
6. Furthermore, the family members of the victim were bitter in regard to the commission of this offence. The father of the deceased was not interested in the reconciliation process, because he believes his son was maliciously killed. He wants the court to do justice.
7. The local governmental administration stated that the accused lived harmoniously with his family and the community.
8. The accused is the sole bread winner of his family of eight children. All the eight children are school going. They also depend upon him.
9. He is also remorseful and regrets the death of the deceased. She therefore urged the court to impose a non-custodial sentence.
10. I have considered the circumstances of the offence including the mitigating and aggravating factors. I find that the accused killed the deceased, who in terms of age was in his early 20s. I also find that the accused inflicted serious and painful injuries on the deceased. It was a brutal and painful attack.
11. Furthermore, I find that the submission of the prosecutor urging the court to impose a deterrent sentence lacks legal basis. The prosecutor is not allowed by law to call for a deterrent sentence. In this regard I am guided by *Shiani v Republic (1972) EA 55*, in which the court held that it is improper for the prosecution to inform the court that the offence is serious. The reason for this is that sentencing is a matter for the discretion of the court. Additionally, the role of the prosecutor is to present facts to the court and leave the issue of sentencing for the court to decide. The prosecutor is allowed to point out the aggravating factors such as the injuries inflicted and whether the accused has previous convictions or not. I therefore reject her submission in that regard.
12. It is only the accused who is allowed to make any recommendations as to the sentence to be imposed, which is part of his mitigation.
13. I am aware that in the USA prosecutors are allowed by law to recommend to the court the sentence to be imposed, notwithstanding that its legal system is based on the adversarial English common law, which legal system also obtains in Kenya. The recommendatory power that is vested in the USA prosecutors is inapplicable in Kenya.

14. Furthermore, I find that the accused has heavy family responsibilities and is a first offender.

15. After taking all the foregoing matters into account, I hereby sentence the accused to six years' imprisonment.

Judgement signed, dated and delivered in open court at Narok this 22<sup>nd</sup> day of June 2020 in the absence of Mr. Karanja for the Republic and Ms. Kudate for the accused vide video link.

**J. M. Bwonwong'a**

**Judge**

**22/06/2020**