



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

HIGH COURT CRIMINAL CASE NO. 110 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

STANLEY KAMAU NTUMBI.....ACCUSED

RULING ON SENTENCE

1. The convict was on the 30th day of January, 2020 found guilty and convicted of murder of John Njuguna Kimemia on 24th November, 2014 contrary to Section 203 as read with 204 of the Penal Code. His mitigation was fixed for 18/3/2020 then Covid – 19 came which explained the delay in passing sentence herein.

2. The Court is now called upon to pass an adequate, appropriate and just sentence herein taking into account the Supreme Court of Kenya decision in **FRANCIS K. MURUATETU & OTHERS v REPUBLIC [2017] eKLR** where the Supreme court outlawed the mandatory nature of the death sentence as provided for under Section 204 of the Penal Code.

3. In compliance with the said decision and the provisions of Sentencing Policy Guidelines, the court called for pre-sentencing report and allowed the accused to tender in his mitigation. On behalf of the convict, Mr. Kasyoki stated that the same was very remorseful since his action led to the death of his friend. He stated that the same was a first offender who had reformed during the period of his trial and therefore the court should exercise mercy and pass a lenient sentence. The accused himself stated that they had been friends with the deceased for a period of fifteen years and had not intended to kill him.

4. On behalf of the State Mr. Okeyo submitted that there were no previous record on the accused who should therefore be treated as a first offender. He contended that the family of the victim took great exceptions at the conduct of the accused after the death for which it can be said that the same was not remorseful. He submitted that it took the same five years to get in touch with the family of the deceased, neither did he take part in his burial.

5. In the pre-sentencing report, it was stated that the accused dropped out of school after sitting for his KCPE in 2008 thereafter engaged in casual jobs at construction sites and bodaboda riding until the time of his arrest. He was married to a house wife with three (3) children aged 9, 4 and 1 year respectively. He admitted committing the offence after an altercation with the deceased who was his friend and who had promised to buy him bhang.

6. He pleaded for leniency saying that the deceased was his close friend of many years having named one of his children after him. His mother and wife stated that he was a friend with the deceased since childhood and the death came to them as a shocker. They sought for leniency on ground that the accused had a young family who will suffer in his absence. On the community ties, it was indicated that bodaboda riders appeared uneasy to disclose much on the accused who re-allocated from the area.

7. On the victim impact statement, the mother and the aunt of the deceased indicated that he was aged 19 years at the time and a boda boda rider. They confirmed the friendship between the deceased and the accused who were neighbours for more than ten years. They indicated that the death was a big blow to them and stated that the accused family never approached them to seek forgiveness nor even participate in the burial arrangement given the friendship and being neighbours. They therefore dismissed the recent effort by the family of the accused to seek forgiveness by sending emissaries through the church.

8. In conclusion it was stated that the accused blamed bhang for the irrational action that led to the death of his childhood friend and therefore sought leniency to enable him look after his young family and make right his past mistakes. The deceased family on the other hand sought for a deterrent sentence.

9. Sentencing objectives as per the Judiciary Sentencing Policy Guidelines are:-

- 1) **Retribution:** to punish the offender for his/her criminal conduct in a just manner.
- 2) **Deterrence:** to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
- 3) **Rehabilitation:** to enable the offender reform from his/her criminal disposition and become a law abiding person.
- 4) **Restorative justice:** to address the needs arising from the criminal conduct such as loss and damages.
- 5) **Community protection:** to protect the community by incapacitating the offender.
- 6) **Denunciation:** to communicate the community's condemnation of the criminal conduct.

10. The court in sentencing a convict is always required to have the above objectives in mind and the purpose from which it is intended to achieve. It must be pointed out that in our jurisdiction there has been a remarkable move towards correctional sentences with an increase in the use of correctional programs in prison and out of prison such as probation and community service, depending on the nature of the crime and the character of the offender. The Supreme Court of Kenya in the case of **Francis Muruatetu (supra)** singled a move towards individualization of sentence by outlawing the mandatory nature of death sentence as then provided for in Section 204 of the Penal Code.

11. From the Sentencing Policy Guidelines, it is clear that any sentence meted out must be fair and just, with the said sentence fitting the crime while maintaining indeterminate sentence as stated by the Supreme Court. The courts have been given the power so to speak by the Supreme Court to exercise substantial discretion to determine sentences in accordance with the gravity of the offences and the degree of culpability of particular offenders. The court then must take into account facts and circumstances concerning the offence or the offender that constitute aggravating or mitigating factors. The court must therefore take into account the personal characteristics not material to the culpability of the offender but that may justify imposition of a different type of sentence.

12. In this case as captured in the judgment, both the accused and the deceased were youths growing up in the same area. They had their youthful pastime activities which included mock fights and performing stunts. From the evidence on record, the material day, was not the first time the accused, the deceased and their group were engaging in what they considered "youthful activities". It was admitted that they would during those activities smoke "bhang".

13. The question which the court must answer while passing sentence herein, while being alive to the fact that a young man lost his life is whether the accused can be rehabilitated to be a better person and if so what would be the best sentence to achieve this objective.

14. The accused is aged 25 years as at the time of sentence. He committed the offence at the teenage age of nineteen (19) years at a time when he had not been fully developed into adulthood. He was in remand custody from 3/12/2015 to 18/12/2017 when he was granted bond. He has since then married and is a father of three children one of who he has named after the deceased, who will be a constant reminder of that fateful day when his action led to the death of the same. Whereas the accused went under for a period of one year after the commission of the offence, I am of the considered view that the same is a candidate for rehabilitation and reformation.

15. I am alive to the pain of the parents of the deceased and their cry for a deterrence sentence that may not replace their dead son. Having said all that I am of the opinion that this is a case where justice and mercy must kiss and the only suitable sentence must be that which will lead to the rehabilitation of the accused to be a better member of the society which will only be achieved through counselling and supervision.

16. Arising from the circumstances under which the offence was committed, the accused mitigation and the pre-sentencing report, I hereby sentence the accused to a probation period of three years during which period he shall be rehabilitated under the supervision of the probation officers so as to be fully integrated into society and hopefully find forgiveness from the family of his friend whose son he immortalized in one of his children on condition that during the said period of time he does not commit a similar offence and if he does, then he shall serve a ten years imprisonment for this offence from the date of the said commission and it is ordered.

17. The accused has right of appeal both on conviction and sentence while the State has right of appeal on sentence.

DATED, SIGNED and DELIVERED at Nairobi this 29th day of July, 2020 through Microsoft Google Teams.

.....

J. WAKIAGA

JUDGE

In the presence of: -

Ms Ong'weno for the State

Mr. Otieno for Kanyoko for the Accused

Accused present

Court Assistant - Karwitha