



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**CRIMINAL NO. 9 OF 2016**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**CHARO JACKSON KARISA GONA.....ACCUSED**

**Coram: Hon. Justice R. Nyakundi**

**Ms. Sombo for the state**

**Mr. Karita for the accused person**

**SENTENCE**

The accused was charged with manslaughter contrary to Section 202(1) as read with Section 205 of the Penal Code Chapter 63 of the Laws of Kenya. The allegation is that the accused unlawfully and unintentionally killed the deceased on the night of 22<sup>nd</sup> of April 2016 at Mfulani village, of Magari location within Kilifi Country.

The court convicted the accused on his own plea of guilty to the offence of manslaughter on a charge prepared following the acceptance by the court of the plea agreement pursuant to section 137H of the Criminal Procedure Code (CPC), upon being satisfied of the factual basis of the plea agreement and that the accused was at the time of the agreement competent, of sound mind and had acted voluntarily in terms of Section 137G of the CPC.

An investigation into the matter unmasked that the accused person in conjunction with **Benjamin (Kamwiti) KahindiNgao** killed the deceased. The two acted upon the instruction of **Samini Karisa Mandu**, who paid the two to kill the deceased on the basis of the allegation that he had bewitched **Samini's** mother who had died after a short illness. The investigation also discovered that the while on a drinking spree, he was heard saying that he was planning on killing yet another person the same way he killed the deceased. This prompted his arrest.

The felony of manslaughter is punishable by the maximum sentence of life imprisonment under section 205 of the Penal Code Act. Nevertheless, this embodies the maximum punishment which is usually reserved for the worst of such cases. The instant case cannot be said to be a case falling within ambit of the most extreme cases of manslaughter. I have for the foregoing reason discounted life imprisonment.

When sentencing convicts, in as much as sentences ought to be meaningful to convicts Court's need not only focus on the convict's degree of liability or the ghastly manner in which the offence was committed. Instead, the Court should also take into consideration amongst others the personal and individual circumstances of the offender as well as the possibility of reform and social re-adaptation of the convict. Thus it is an accepted legal principle that sentences should befit the offender and in this respect, the Court should take into consideration mitigating factors that may avail the convict.

Apart from the foregoing, Courts will take into consideration such factors as the age of the convict both at the time of committing the offence as well as at the time of sentencing. It is the position that the law generally favors relatively young or old people to protect them from being in custody for longer periods. Similarly, courts will always be slow at imposing long prison terms for first offenders where necessary. The rationale being that it is important that they avoid contact with hardened criminals who in turn negatively affect their process of reform as well as their reintegration into society after serving their just punishments.

Courts will also take into consideration the time already spent in prison by the convict and will usually order that the sentence takes effect from the date of the convict's arrest thus factoring in the time already spent in the prison. Courts will, however, discount this factor if the time spent was occasioned by the convict themselves i.e. where they skip bail or because of unnecessary adjournments.

As a matter of principle, courts have also to look into the personal and individual circumstances of the offender as well as the possibility of reform and social re-adaptation of the convict. Arguably, this may relate to the convict's individual circumstances at the time of committing the offence as well as at the time of sentencing i.e. their mental state; health; hardships, etc. Furthermore, the Court will take into consideration the manner in which the offence was committed i.e. whether an offensive weapon was used or not; as well as consider issues of intoxication at the time of committing the offence even though not successfully pleaded in defence.

It is noteworthy that the list is not exhaustive. Instead, in the Malawian case of **The Republic vs Keke Confirmation Case No. 404 of 2010 (unreported), Mwaungulu J.** (as he was then) explained that sentencers must develop from their own experience and from appellate Courts the peculiar aggravating and mitigating circumstances generally and in specific offences. He went on to state, amongst others, that the following factors may mitigate: being a first offender, age, duress, provocation as well as lesser participation in the crime.

There is no dispute that a precious life was lost under appalling circumstances in the sense that his death was caused by assaulting the deceased with a weapon taking the form of a panga. Thus there was use of a dangerous weapon. However, that this Court is called upon not to merely look at the irreparable loss of life and the decrepit circumstances of the death itself but that as it arrives at an appropriate sentence for the convict it should also consider any other relevant factors that may work in mitigation of the sentence to be meted out.

He is a first offender, thus he has no previous criminal records. He had lived a blameless life prior to the killing. The accused person was arrested by the members of the public on 22/7/2016 after which he voluntarily made a confession. The confession was recorded on the 24<sup>th</sup> July 2016. He has remained in custody from the date of arrest since he was neither released on bail or bond. I have considered the period already spent in prison from 22/7/2016. The sentence to follow shall run from the date of arrest.

The court takes due cognizance of the fact that the sentencing process is a balancing act which aims at serving the interests of the justice system as may be reflected in the interests of the victims family; the offender; and society at large. Such a process is indeed not an easy task but that the Court in doing so exercises its discretion judiciously. Thus the ultimate discretion lies with the Court.

In the present circumstances after considering the aggravating and mitigating factors and that the defendant spent about 4 years in custody without having been released on bail or bond. This Court sentences the accused to serve a sentence of 15 years' imprisonment effective from the date of arraignment before Court on 8.8.2016.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 22<sup>ND</sup> DAY OF JULY 2020**

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**R. NYAKUNDI**

**JUDGE**