



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KABARNET

CRIMINAL CASE NO. 78 OF 2017

REPUBLIC.....RESPONDENT

=VERSUS=

PETER MACHARIA MWANGI.....ACCUSED

JUDGMENT

- 1) The accused who was initially charged with murder contrary to section 203 as read with 204 of the Penal Code pleaded guilty to a lesser charge of manslaughter contrary to section 202 as read with 205 of the Penal Code upon a plea bargain which the court accept on the factual basis presented by the Prosecution that the killing was not premeditated.
- 2) The Particulars of the charge of Manslaughter was that the accused “*Peter Mwangi Macharia: on the 2nd day of May 2017 at Makutano trading center in Koibatek Sub-County within Baringo County, unlawfully killed Samuel Kibugi.*”
- 3) In accepting the plea bargain the court examined the accused to satisfy itself that the plea bargain was voluntary and noted the accused’s mental assessment certificate dated 12th June 20-17 in which the accused was certified fit to plead.
- 4) The Facts of the case were set out by the Prosecution as follows:

“FACTS

7. On the 1st day of May 2017 at around 7:00 pm, the deceased in this case one Samuel Kibugi and his five other friends were on duty along the Eldoret – Nakuru Highway in Makutano where they had been contracted to guard vehicles. They were guarding seven vehicles and were to be paid 100 shillings per vehicle. At around 1:00 am on the 2nd of May 2017, one of their colleagues went away to sleep and they remained five of them including the deceased. At about 2:30 am, the accused herein came to where they were and announced that he had a grudge with the deceased and wanted to avenge. The accused herein started a fight with the deceased but the deceased ran away and hid himself at a distance. The accused herein followed him while concealing himself amongst the parked vehicles. He approached the deceased from the front and took a piece of firewood which he used to hit the deceased on the head. The deceased fell down unconscious and was bleeding from the profusely. The accused then dropped the firewood and ran away towards his home. Colleagues of the deceased rushed him to Eldama Ravine Sub-County hospital where he died while undergoing treatment. The accused was arrested by members of public who handed him over to police officers at Makutano police station. The body of the deceased was removed to Eldama Ravine Sub-County hospital mortuary where postmortem was done on 5th of May 2017 and cause of death was found to be blunt force trauma to the head consistent with assault. The accused was taken to court and charged with the offence of murder which has now been reduced to manslaughter. He was thereafter presented before the doctor at Nakuru Level 5 hospital for mental assessment and was declared mentally fit to stand trial.”

Conviction

- 5) Upon the accused accepting the facts as true, the court accepted his plea of guilty convicted him for the offence of Manslaughter contrary to section 202 as read with 205 of the Penal Code.

Sentencing

- 6) In mitigation, the accused’s counsel urged as follows:

“Mr Kemboi for the Accused

The accused had no guilty intention to murder his friend Samuel Kibugi. It is evident that the deceased died as result of a fight. In a nutshell, the deceased had no intention to kill. The accused was sober at the time of the offence. The deceased died of a single hit not repeated. It is clear that the accused had no intention to kill.

Accused is married to one Philys Njeri who was expecting a child at the time of arrest. He has not seen her child. Accused has a small brother Joseph Mwangi who has depending on him before he was arrested. Accused was a watchman at Makutano Junction a job he has done for the last 10 years. He had not had any incident before. He is a law abiding citizen.

Accused is an orphan. He lost his father in 2/2/1996 and the mother died in 1987 September when the accused and the small brother were still small boys. Accused was arrested for the first time on 10/5/2017. He has been in custody for the last 3 years. He has learnt a lesson and is extremely remorseful for what he did. The family of the accused has talked to the family of the deceased and the family of the deceased has forgiven the accused.

Accused is remorseful and has sought forgiveness and humbly prays for a lenient sentence. He is willing to be a law abiding citizen and prays for a non-custodial sentence and any other sentence that the court deems appropriate.”

7) The DPP urged the court to call for a probation officer’s report as follows:

“DPP (Ms. Kitilit)

I do not have anything to add. We clarify to the court, however, the Post-mortem Report has original completion on the carbon copy thereof but is signed by the examining doctor. We can seek Probation Officer’s Report in view of the alleged reconciliation between the family of the deceased and the family of the accused.”

8) The Court invited a pre-sentence report from the Probation Office, which was date filed 13th July 2020 and recommended as follows:

“CONCLUSION

*Your honour the above mentioned is a 43 years old. He does usual jobs to earn a living at the Makutano Centre. He is known to be a good citizen and close friend to the deceased. He is single and uses his salary to supplement provision for his folks who were left under his care after the death of his parents. Those who were interviewed talked good of him but were quick to note that the accused had issues with those who would call him names related to his former mental health problem. **The social inquiry revealed that the accused at some point had a mental problem after the death of his parents and members of the public continued to call him names which did not auger well with him. It was noted that the deceased used to beat him and call him the said names “Wazimu” especially when he was drunk.***

The administrator in the area noted that the accused had no other records of criminality and that he used to mind his business at the Centre. However, the community is still very hostile and cries for his blood.

He is very remorsefully and still not in touch with the reality. He however has realized the gravity of the matter and asks for leniency of the court.

FRANCISCA KAMANDE

PROBATION OFFICER

KOIBATEK”

9) Despite opportunity granted, the accused’s Counsel and the Prosecution Counsel for the DPP did not make any comments on the Probation Officer’s Report.

Determination

10) The point for determination is the appropriate sentence in the circumstances of the case, the court having convicted the accused on his own plea of guilty for the lesser offence of manslaughter upon a successful plea bargain.

11) The accused was on the facts of the case, the aggressor who went to the deceased and picked a fight over an alleged grudge which he claimed to have with the deceased, probably for beating him and calling him “wazimu” as reported on social inquiry by the Probation Officer; and upon which the deceased had ran away and hid at a distance. The accused had, however, “*followed him while concealing himself amongst the parked vehicles. He approached the deceased from the front and took a piece of firewood which he used to hit the deceased on the head. The deceased fell down unconscious and was bleeding from the profusely. The accused then dropped the firewood and ran away towards his home.*” The accused’s blow with a piece of firewood proved fatal.

12) On the evidence, there was no immediate provocation and although there was no intention to kill, but apparently only a fight over a grudge that he had with his deceased colleague, there is need for rehabilitation of the accused and deterrence of others in like situation. To his

credit, the accused did not run away into hiding and only went to his home, then not being aware that he had executed a fatal blow on the deceased.

13) The Court notes an aspect of diminished responsibility in the accused's mental state, which the Probation Officer's social inquiry indicated as having been troubled by a "*former mental health problem after the death of his parents*" and the subtle provocation although not immediate, as noted in the Probation Officer's report that "***the deceased used to beat him and call him the said names "Wazimu" especially when he was drunk.***"

14) A sentence of imprisonment for eight (8) years meets the justice of the case.

ORDERS

15) The accused is convicted of his own plea of guilty for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code.

16) The accused is sentenced to serve imprisonment for a term of **eight (8) years**, which sentence shall pursuant to section 333(2) of the Criminal Procedure Code commence on the **10th May 2017**, when the accused was remanded to await the determination of his trial.

Order accordingly.

DATED AND DELIVERED THIS 28TH DAY OF SEPTEMBER 2020.

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S Kemboi & Co. Advocates for the Appellant.

Ms. Kitilit, Prosecution for the DPP.