



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL CASE NO. 11 OF 2019

STATE.....PROSECUTION

VERSUS

EVANS OCHIENG OUMA.....ACCUSED

RULING ON SENTENCE

1. On 28/7/2020 this court convicted the accused person herein **Evans Ochieng Ouma** of the offence of Murder after a Plea bargaining. Plea of guilty was entered after he agreed to plea bargain with the prosecution.
2. The accused person and his counsel Mr. Ochanyo mitigated saying the accused was aged 32 years and that the deceased was the accused person's brother.
3. Further, that the accused killed his brother out of siblings rivalry but he now regrets the incident and is remorseful such that he breaks down on realization that he killed his own brother.
4. The accused also wishes he had died instead of his brother and so he pleads for leniency.
5. The accused mitigated saying his late brother emerged with a panga, he snatched it, went away then the deceased followed him and stabbed him 5 times and he was rushed to hospital while vomiting blood. He was unconscious for 5 days, was operated on and when he regained consciousness, he asked where his brother was and was devastated to learn of his passing. He stated that following his injuries he fills up the chest and can only eat rice and take porridge. That he is disturbed by the death of his brother although he also suffered very serious injuries. He stated that his brother was the aggressor, kicking his door and cutting him with a panga. He regrets the incident. He has 1 wife and one child.
6. Following mitigation, this court ordered for a Presentence report and Victim Impact Statement. On 16/10/2020 the Probation Officer Mr. Odumba David filed a Presentence Report which shows that the accused abuses bhang and alcohol and therefore the home environment is not conducive for rehabilitation.
7. His mother who is also the mother to the deceased is not ready to receive the accused at home given a non custodial sentence and that she threatens to commit suicide as the offender is violent and is alleged to be a thief who steals from people. She states that the accused was to kill her on the fateful day as he beat her up using a log of wood. She ran into the house, locked herself inside but he followed her and stabbed the iron sheet door with a knife he had in his hand, eight times threatening to kill her, which marks are still fresh on the door and she also suffered serious injuries from his beatings. He went to get a panga which he came with to finish her but she escaped and that is when he went for his brother and killed him after his mother escaped death narrowly.
8. The offender has allegedly beaten his mother severally before and chased her from her home with her other children and that they had first returned after being away for 6 months when this incident occurred.
9. The family members state that they have no peace with the accused following his return from fishing in Lake Victoria, following his dropping out of school in Class 5. That they only get peace when he is in jail and that he has been jailed three times where he uses different names to hide his identity and criminal record. That he destroys people's property, takes it and sells it and sells even farm produce of his mother and if she resists, he chases her away so that he can have the freedom to do whatever he wants to do. That he is a habitual thief.
10. The community describes the accused as a hostile violent person who has no company in the locality. He steals from them and breaks into their property, and that he does not want his mother or other family member interact with any other people outside their family otherwise he confronts the persons and ensures that such friendship is stopped. They are not ready to receive him back home to enable them enjoy some peace in the community.

11. His wife quit marriage because of the substance abuse and violence even when he is not on the substance.
12. The Probation Officer recommends custodial sentence because the accused is a serious threat to his own family members and the community at large. He recommends strict and close supervision to help him become a good member of the society.
13. I have considered the mitigation by the accused and his advocate and the presentence report as filed by the Probation Officer. I observe that the accused has no known previous criminal records according to the Prosecution but a detailed Social Inquiry Report reveals that the accused has 2 faces in court, he is a humble human being who is remorseful. At home and in the community, he is a wild animal ready to maul his own family members and that is why he killed his own blood brother. His own mother escaped death by a whisker.
14. The accused person nonetheless accepts that he killed his brother out of anger as his brother also cut him with a panga. The accused person was seriously injured too, perhaps as a result of self-defence by his deceased brother who was overwhelmed by the accused. The Social Inquiry Report is clear on the antecedents of the accused who is a repeat offender in matters stealing and housebreaking.
15. From the above, it is clear to this court that the accused is a violent and cruel person who cannot live without close supervision and counselling for him to overcome his harsh temperament. He requires help and that help can only come from prison where officers are trained to rehabilitate him and reform him before he can be let back into the society where he is a big threat.
16. That being the case, I am satisfied that a non-custodial sentence is not suitable to the accused person who should be kept in prison to learn some life skills and be rehabilitated before he can be let back into the community. Life is sacrosanct. No person has any right to take away another's life, except by law provided. The deceased did not deserve to die under the hand of his cruel brother.
17. Punishment for Murder is death penalty. However, as the accused has mitigated and says he is remorseful, and he did Plea bargain, saving court's time of hearing witnesses to prove the obvious, I exercise leniency and sentence the accused person **Evans Ochieng Ouma 'aka' Boss** to serve twenty (20) years imprisonment to be calculated from the date of his arrest.
18. Right of Appeal explained.
19. File closed.
20. Orders accordingly.

Dated, signed and delivered at Siaya this 21st day of October 2020

R.E. ABURILI

JUDGE

In the Presence of:

Accused person and his Counsel Mr. Ochanyo

Mr. Okachi, Senior Principal Prosecution Counsel for State

Court Assistant: Brenda