

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 50 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

PATRICK WACHIRA WAMBUI alias NDUNG'U.....ACCUSED

RULING ON SENTENCE

Patrick Wachira Wambui alias Ndung'u was tried and found guilty for the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He was accused of killing Jackson Oganda Nyachio on 23rd September 2018 at Kareya area of Langata Sub-County within Nairobi County. After the verdict was pronounced on 22nd October 2020 this court was informed by the Prosecution Counsel that the accused did not have criminal records. She asked the court to treat the accused as a first offender.

During mitigation hearing, Mr. Ondieki for the accused told the court that the accused grew up in Nairobi in a life of neglect as a street boy; that the accused started fendng for himself early in life and suffered immensely; that he was brought up by elderly grandparents who knew little about his welfare; that he has no previous criminal records; that he did not plan to kill the deceased and that evidence discloses no intention to kill. Mr. Ondieki submitted further that the events leading to the death of the deceased were as a result of normal disagreements between touts and that this disagreement could have gone either way. He submitted that the accused was remorseful for what happened; that he has a young family with a small baby and that the accused was the only bread winner. He submitted that the accused led a childhood of intoxication and drug abuse which have affected his mental stability leading to his state of being highly temperamental. Mr. Ondieki asked the court to consider giving the accused a second chance in life and hand him a lenient sentence.

The accused also addressed the court during mitigation hearing. He told the court that he was 25 years old and that he was remorseful for the events that led to the death of the deceased. He said he has been in custody since 6th October 2018 and while there he has learned Christian values; that he has learned to control his anger and to positively associate with other people; that he has maintained discipline, law and order and that given another chance in live he will not commit another offence.

The prosecution submitted that the accused attacked the deceased without provocation and that he was drunk when he attacked the deceased and that the accused is known to abuse substance. It was submitted that the deceased did not fight back; that the accused should have exercised self-restraint. The prosecution asked this court to meet out the maximum sentence against the accused.

Before pronouncing sentence I called for a probation report. It was filed in court on 19th November 2010. It shows that the accused is aged 33 years. This contradicts what the accused told the court. The report reveals that the accused was estranged from his 'family' and was living alone when this offence occurred. He cannot therefore be a sole bread winner as stated in mitigation. The report is not favourable and recommends a custodial sentence. This court is however not bound by the report.

I have considered the mitigation of the accused. I have noted that he is remorseful and termed the incident leading to the death of the deceased as bad luck. I have also noted that the accused has been in custody since October 2018. I have taken into account that the accused was restrained by other touts but continued assaulting the deceased. He may not have intended to kill the deceased but he cannot escape blame that he knew his actions would cause grievous harm to the deceased hence the conviction for murder. In my view a non-custodial sentence is not befitting a sentence for the accused given the circumstances of the offence. I have taken into consideration the two years the accused has stayed in custody while sentencing the accused. In my considered view a sentence of 15 years is befitting. The accused shall serve 15 years imprisonment for the offence of murder. The sentence shall be effective from October 2018. For the avoidance of doubt the 15 years shall run from October 2018. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 30TH DAY OF NOVEMBER 2020.

S. N. MUTUKU

JUDGE