



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL CASE NO. 26 OF 2018

(CORAM: ODUNGA, J)

REPUBLIC.....PROSECUTOR

VERSUS

SIMON MUTUNGA KINGOO.....ACCUSED

SENTENCE

1. The accused herein, **Simon Mutunga Kingoo**, was charged with the offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. The facts were that on 23rd September, 2018 at around 7.00am the deceased, **Bonface Kyalo Mativo**, together with the accused were outside the house in which they were sleeping which also served as a kitchen. The deceased then requested the accused to go buy milk for tea but the accused refused to do so. A confrontation then ensued and they started fighting. The accused entered the kitchen and took a kitchen knife and stabbed the deceased on his right chest. He then dropped the knife and fled the scene. Two other people who were inside the heard the confrontation and upon coming out they found the deceased lying down bleeding on the chest and the accused was nowhere to be seen. The two then went to look for a means of transport to ferry the deceased to the hospital but upon their return, the deceased had passed away.

2. Police officers from Masii were then called and they recovered the knife, took photographs of the deceased and the scene and the body was taken to Machakos Level 5 Hospital Mortuary. On 27th September, 2018 a post mortem examination was done and it was found that the cause of death was a penetrating injury from a stab wound on the right chest.

3. After investigations the accused was traced at Mlolongo where he was arrested and was charged.

4. The accused pleaded guilty to the charge and was on convicted on own plea of guilty on 27th July, 2020.

5. In his mitigation the accused stated that the accused had no intention of killing the deceased. He was remorseful and it was revealed that there were ongoing reconciliation negotiations between the families of the accused and that of the deceased and that the accused had been forgiven by the family of the deceased. It was submitted that the accused had been in remand since 26th September, 2018 and had no disciplinary issues while therein. It was submitted that he was the sole breadwinner of the family who was taking care of his partially deaf and dumb peasant father while his mother has psychological problems. He is 31 years old and requires self-control and anger management and if placed on probation can undertake lessons to do so.

6. On the part of the prosecution, it was submitted that the accused may be treated as a first offender. Based on the Probation Report, the Court was urged to impose a deterrent sentence.

7. According to the Probation Report, the accused and the deceased were acquaintances at a construction site where they were part of the workers who were all accommodated in a room provided by the contractor. The altercation arose from the fact that the deceased abused the accused when the accused asked for money for buying milk since the deceased was the one entrusted with the group's finances. In the opinion of the probation officer, the offence was as result of poor anger management, lack of self-control and lack of skills in dispute resolution mechanisms.

8. From the report the accused used to relate with the community members of the family well and had strong community ties. After reconciliatory steps taken by the family of the deceased, the family of the victim was amenable to the reconciliation and certain steps had already been taken in that direction hence the family of the victim had no issue with the accused. The accused's family had a positive attitude towards him.

9. I have considered the probation report and the mitigating circumstances. The Supreme Court in the case of Francis Karioko Muruatetu & Another vs. Republic Petition Number 15 of 2015 discussed the provisions of section 329 of the *Criminal Procedure Code* which provides:-

“The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed...It is without a doubt that the court ought to take into account the evidence, the nature of the offence and the circumstances of the case in order to arrive at the appropriate sentence.”

10. This court would need to consider some cases which will assist it to reach a just decision in regard to the sentencing of the accused. In the case R vs. Scott (2005) NSWCCA 152 Howie J Grove and Barr JJ stated:

“There is a fundamental and immutable principle of sentencing that this sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed in the circumstances of the crime committed...One of the purposes of punishment is to ensure that an offender is adequately punished...a further purpose of punishment is to denounce the conduct of the offender.”

11. In a New Zealand decision namely R vs. AEM (200) it was decided:

“... One of the main purposes of punishment...is to protect the public from the commission of such crimes by making it clear to the offender and to other persons with similar impulses that if they yield them, they will meet this punishment.”

12. In R vs. Harrison (1997) 93 Crim R 314 it was stated:-

“Except in well- defined circumstances such as youth or mental incapacity of the offender...Public deterrence is generally regarded as the main purpose of punishment, and this objective considerations relating to particular prisoner (however persuasive) are necessarily subsidiary to the duty of the courts to see that the sentence which is imposed will operate as a powerful factor in preventing the commission of similar crimes by those may who otherwise would be tempted by the prospect that only light punishment will be imposed.”

13. As regards the sentence, the Supreme Court in Francis Karioko Muruatetu & Another vs. Republic, Petition No. 15 of 2015, as a guide in sentencing held that:

“[71]...the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- (a) age of the offender;**
- (b) being a first offender;**
- (c) whether the offender pleaded guilty;**
- (d) character and record of the offender;**
- (e) commission of the offence in response to gender-based violence;**
- (f) remorsefulness of the offender;**
- (g) the possibility of reform and social re-adaptation of the offender;**
- (h) any other factor that the Court considers relevant.**

14. Loss of life is a very serious matter. In this case it is clear that the accused and the deceased were close and apart from the fact that the accused was rather temperamental, there were no differences between the two.

15. As appreciated by the Supreme Court in Muruatetu Case (supra):

“In Kenya, many courts have highlighted the principles of sentencing. One such case is the High Court criminal appeal decision in Dahir Hussein v. Republic Criminal Appeal No. 1 of 2015; [2015] eKLR, where the High Court held that the objectives include: “deterrence, rehabilitation, accountability for one’s actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim.” The 2016 Judiciary of Kenya Sentencing Policy Guidelines lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

“Sentences are imposed to meet the following objectives:

- 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 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. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

5. Community protection: To protect the community by incapacitating the offender.

6. Denunciation: To communicate the community's condemnation of the criminal conduct."

The sentencing policy states at paragraph 4.2 that when carrying out sentencing all these objectives are geared to in totality, though in some instances some of the sentences may be in conflict."

16. The accused has been in custody since 26th September, 2018 a period of slightly more than two years. To my mind the accused herein require therapy rather than punishment and ought to be placed on probation in order for her to undergo guidance and counselling since reconciliation has taken place between the two families and the accused has been forgiven.

17. In the circumstances of this case, the main objective of sentencing has been largely achieved and keeping the accused in custody will not serve any useful purpose.

18. Having considered the circumstances of this case, on the authority of **Republic vs. Sarah Mutete Matheka [2018] eKLR**, I direct that in order for the accused to undergo anger management therapy he ought to be under the supervision. Accordingly, the accused is hereby placed on community service order for three (3) years at Kenol Police Station. Should he fail to comply with the directions and instructions given to him, he is reminded that he will serve the remainder of his term in custody.

19. It is so ordered.

Judgement read, signed and delivered in open Court at Machakos this 16th day of December, 2020.

G V ODUNGA

JUDGE

In the presence of:

Mr Musya for Mr Muumbi for the Accused

Mr Ngetich for the State

CA Geoffrey