



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO. 22 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

DAVID KIPTOO MALEL.....ACCUSED

RULING ON SENTENCE

1. David Kiptoo Malel, the accused in this matter, was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence were that on the 3rd day of October 2018 at [particulars withheld] sub-location in Bureti sub-county within Kericho County, he murdered G K.
2. The accused pleaded not guilty to the offence. However, pursuant to a plea bargain agreement with the state, he pleaded guilty to the lesser offence of manslaughter and was convicted on his own plea.
3. The facts of the case as presented by Learned Prosecution Counsel, Ms. Keli, were that the accused was the father of the deceased, who was a pupil at [particulars withheld] Primary School. On 2nd October 2018, the deceased absconded classes, and he did not go back home in the evening. The accused started looking for him but did not find him on that day. On 3rd October 2018, at around 6.30 a.m., the accused managed to find the deceased at a neighbour's compound.
4. He picked a stick and hit the deceased on the head while scolding him and asking him why he was not going to school. The deceased fell down and blood started oozing from his head. On noticing that the deceased was seriously injured, the accused called his elder son, Hillary Too, who normally rides a motor bike and instructed him to rush to the scene so that they could rush the deceased to hospital. Hillary Too arrived at the scene and found the accused and their neighbours trying to offer first aid to the deceased. The accused and his first son rushed the deceased to Kapkatet District Hospital but the deceased died while undergoing treatment and his body was moved to the hospital mortuary.
5. A post mortem conducted on 6th October 2018 by Dr. Nickson Mutai established the cause of death as head injury due to assault. The state produced the post mortem report in respect of the deceased.
6. The matter was reported at Litein Police Station and the accused was arrested and charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code, which was then been reduced to manslaughter contrary to section 202 as read with 205 of the Penal Code pursuant to the plea agreement with the state. The state indicated that the accused is a first offender.
7. In mitigation on behalf of the accused, Learned Counsel, Ms. Wilbey, stated that the accused was very remorseful and regretted the death of the deceased, who was his son. The death was not planned, and he was praying for forgiveness and leniency. That he was married and a father of 10 children and was the sole bread winner for the family. He was also a first offender and had never been involved in any criminal activity in his life.
- 8.. His family had forgiven him and welcomed him back home, and they were praying that he should be given a non-custodial sentence. They had also held a Kipsigis traditional purification rite on 9th October 2018. Ms. Wilbey produced minutes of the meeting and a letter from the deceased's school showing that the deceased had gone missing and the accused had gone to inquire about his whereabouts. She also placed before the court two other letters, one from the local chief and the other from the Kimugul tea buying centre where the accused was employed, both vouching for the accused's good character.
9. The minutes and letters all point to the accused as a man of good character, a loving and concerned father, a hardworking man. Ms. Wilbey submitted that this was a case of a normal occurrence where a parent was disciplining his child, not to harm him but to correct him, but that he unfortunately used unnecessary and excessive force, for which he was remorseful. Ms. Wilbey urged the court to give him a non-custodial sentence.

10. I have considered the facts of this case and the mitigation offered by Ms. Wilbey on behalf of the accused. I have also noted the letters furnished to the court attesting to the good character of the accused. I have further considered the social inquiry report by the Probation Office, Kericho.

11. It is noted in the report that the accused, a father of 13 including a one year old child, is a good man. He had approached his son who had dropped out of school and while trying to stop him from running away, hit him on the forehead. Though he rushed his son to Kapkatet District Hospital, the child succumbed to the injury he had sustained. The community seems unanimous that he is a good person who should be given a second chance and they pray that he should be given a non-custodial sentence.

12. Having noted all the good things said about the accused, however, I still have the other story, a young boy, fourteen years of age, dead because his father was so angry that his son had absconded from school and spent the night away from home that he was unable to bridle his anger. He had used such force on his son's head that the child had succumbed to his injuries. Ms. Wilbey described the incident as a normal occurrence in which a father disciplined his son but used excessive force.

13. I tend to disagree. It is not a normal occurrence for a father to discipline his son by hitting him with a stick on his most vital organ, the head, so violently that the assault resulted in his death. I accept, however, that the accused was remorseful. While he went overboard with the mode of punishment of his son, there is no indication that he intended to kill him.

14. So what should be done with a parent who 'punishes' his child to death? This is a father who, at a most critical moment, failed to govern his anger, and as a result, his son is dead. A human life was lost because of this failure. While I appreciate that he is remorseful and doubtless he has punished himself in his heart and mind, there is a need for him to serve some time to appreciate the importance of human life, and for others in his community to learn a vital lesson: a stick wielded in anger on a child can have fatal consequences, and the law will punish a parent who acts in anger and injures or, as in this case, kills his child.

15. I accordingly sentence the accused to a term of imprisonment for one (1) year. He has a right of appeal in 14 days.

Dated Delivered and Signed at Kericho this 21st day of February 2019

MUMBI NGUGI

JUDGE