



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

HIGH COURT CRIMINAL CASE NO. 26 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

ELIJAH CHEPKWONY KIBET.....ACCUSED

RULING ON SENTENCE

1. In the judgment dated 23rd November 2018, I found the accused, Elijah t Chepkwony Kibet, guilty of the offence of murder contrary to section 203 as read with section 204 of the Penal Code. I found that he had, on the 16th day of June 2013 at Makitem village in Bureti District within Kericho County, he murdered Gilbert Kipngeno Bett.

2. The state indicated that the accused may be treated as a first offender.

3. In mitigation on behalf of the accused, Learned Counsel, Mr. Ngeno, stated that the accused was aged 58, and was married with 7 children, some of whom were school going. He was the sole bread winner. He regretted the incident as the deceased was his friend. He had learnt in the 5 years he was in custody not to be over reactive to insults. He asked for forgiveness from the family of the deceased.

4. A social inquiry report was prepared and filed in respect of the accused. In the report, the Probation Office notes that the accused had previously been charged with the offence of murder which was reduced to manslaughter, and he served a jail term. In that case, he had been charged with the killing of his brother, one Joshua Kipkoech Chepkwony, when they quarreled and fought. The local administration indicates that the accused is not a good person, he often took alcohol and was suspected to be smoking bhang. It was also aware that he had been convicted for a similar offence before.

5. The accused pleads for leniency, asserting that he did not intend to kill. He further states that he is the bread winner and his family is dependent on him.

6. I have considered the mitigation offered by the accused, and the social inquiry report. I note that the prosecution informed the court that he was a first offender, though this was clearly inaccurate information. The social inquiry report indicates that he had been charged with killing his own brother and served a prison sentence. Unfortunately, the Probation Office did not bother to inquire further and establish the veracity of the information it had received. This would have assisted in obtaining the records in respect of the accused's previous conviction and sentence.

7. Be that as it may, this court has found the accused guilty of the offence of murder. The evidence indicates that the accused started the dispute that culminated in the fatal confrontation with the deceased. He was destroying the fence to the land that the deceased had bought from the accused's brother, and a fight ensued between him and the deceased. He went to fetch arrows and a bow and aimed at the deceased, and when he missed, stabbed him with an arrow head. The death of the deceased, though preceded by a fight, was not accidental. It was the deliberate act of the accused, and contrary to his statement in mitigation, he fully intended to kill the deceased.

8. I do not have before me the prior record that the accused is said to have. However, it is evident that, assuming the information is correct, and I see no reason why anyone would inform the Probation Office that he had killed his own brother if this was not a truthful statement, the accused did not learn a lesson about the value of human life. He does not deserve any leniency from the court.

9. In the circumstances, I hereby sentence the accused to life imprisonment.

10. He has a right of appeal within 14 days

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

MUMBI NGUGI

JUDGE

In the presence of:

Nelson Kenei- Court Assistant

Ms. Keli- for the Director of Public Prosecutions

Mr. Ngeno-for the accused.