



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HCCRC NO. 71 OF 2016

LESITT, J

REPUBLIC.....PROSECUTOR

VERSUS

ANTHONY OUMA ONYANGO.....ACCUSED

RULING ON SENTENCE

1. The accused **ANTHONY OUMA ONYANGO** was convicted of Manslaughter contrary to **Section 202** of the **Penal Code** after he pleaded guilty to the charge. This followed a successful Plea Bargaining with the prosecution which culminated with the reduction of the Murder charge contrary to **Section 203 of Penal code** to Manslaughter contrary to **Section 202** of the **Penal Code**.
2. The accused was arraigned in court on the 13th October, 2016 and has been in custody for a period of 2 years and 7 months pending his trial.
3. The State has treated the accused as a first offender.
4. Mr Muchiri counsel representing the accused urged in mitigation on behalf of the accused that the accused had accepted the lesser charge of manslaughter therefore saving the court time. Counsel urged that he accused was remorseful for his actions and that he had learnt his lesson having been in custody since 2016. Counsel urged the court to be considerate of the time spent in custody.
5. Counsel further urged that the accused was intoxicated when the incident happened. He further urged that the accused being a married man and blessed with a daughter, would be glad to be integrated back to the society. Counsel urged that the accused had repented and was remorseful for the offence.
6. Mr. Muchiri submitted that the related matter in **HCCRC NO. 9 OF 2016** was handled by my sister Mutuku, J. and that she gave the accused therein a sentence of 2 year imprisonment. Counsel urged that the Pre-Sentence report filed in respect of the accused herein was favourable to the accused.
7. This court called for a pre-sentence report. The Report is dated 27th May, 2019 and I have considered it. It has highlighted the fact that accused is 35 years of age. It shows that the accused has been a street boy since dropping out of school and relocating to Nairobi. He is a father to a young girl aged 3 years. The Probation Officer stated that the accused regrets his actions and was citing his intoxicated state as having contributed to his actions. The family of the accused stated that they attribute his actions of over indulgence in alcohol and sniffing of glue to the street culture and bad influence that he was exposed to at Kenya Cinema. The sister to the accused is willing to personally see to it that the accused relocates from Kenya Cinema.
8. The Victim Impact Statement was incorporated in the pre-sentence report. The deceased is said to have been a street child with no known relatives ever since he relocated from Turkana County. The Probation Officer interviewed other parking boys and a “simu ya Jamii” operator believed to have known the deceased and accused for a considerable time. They stated that the deceased never deserved to die in the manner that he did.
9. The parking boys and “simu ya Jamii” attendant stated that the accused had a tendency of bullying other parking boys and that he exemplified fear in the streets. The accused was known to harass and physically confront anyone who disagreed with him. The chairman of the parking area confirmed having received numerous complaints from colleagues and customers mainly centred on harassment, verbal and physical abuse, threats, disappearing with customers’ change and even breaking into vehicles. They all indicated that the parking area has experienced relative peace in the absence of the accused and would pray for a deterrent sentence against him.

10. I have considered the circumstances of this case. The accused and deceased were both parking attendants along Kenya Cinema. On the fateful day, the deceased got into an argument with one Fasul. The accused joined in the fight, picked up a beer bottle and hit the deceased with it. The accused relentlessly assaulted the deceased while threatening to beat up people who were pleading with him to stop. The accused actions left the deceased unconscious and was only helped by good Samaritans after the accused had fled the scene. The accused is also said to have gone underground after fleeing the scene and was arrested 9 months later.

11. The prosecution produced the deceased post mortem report. The cause of death was opined to have been due to head injury due to blunt force trauma. I find this finding consistent with the facts alluded to in the Plea Agreement.

12. The sentence for the offence of manslaughter is prescribed under **Section 206** of the **Penal code** as life imprisonment. I have considered the fact that the accused has been in custody for 2 and ½ years pending his trial. I have also considered the fact that the accused is a youth aged 35 years. I have also considered that the accused has saved the court considerable time by pleading guilty to the lesser charge of manslaughter.

13. Having taken all these factors into account, I find that it is clearly evident both from the facts filed in the plea agreement and the Pre-Sentence report that the accused herein was pugnacious and picks up fights with anyone who will cross his path. This led him to a fight that was not his at first, he made no inquiries as to the cause of the disagreement between the deceased and a colleague. The accused went ahead to accost the deceased relentlessly despite pleas for him to stop from people at the scene.

14. I have taken into consideration all these factors. I find that despite the accused heart rendering personal circumstances and child history, he acted in dare disregard of the law and human nature. The accused should have separated the deceased and his colleague rather than assume over the fight and mercilessly beat up the deceased.

15. Given the role the accused played of taking sides in a fight not involving him; and given the fact that he injured the deceased despite calls for him to stop, I find it will be appropriate to give him custodial sentence.

16. Consequently, I sentence the accused to five (5) years imprisonment.

DATED AT NAIROBI THIS 29TH DAY OF MAY, 2019.

LESIT, J

JUDGE