



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**HCCRC NO. 41 OF 2018**

**LESITT, J**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**WASHINGTON WACHIRA.....ACCUSED**

**RULING ON SENTENCE**

1. The accused **WASHINGTON WACHIRA** was initially charged with murder contrary to **Section 203** of the **Penal Code**. After a successful Plea Bargaining, an Agreement was entered into where the charges against the accused were reduced to manslaughter contrary to **Section 202** of the **Penal Code**.
2. I have considered that the accused was arraigned in court on the 14<sup>TH</sup> August, 2018. The accused was granted bail but from the record he seems not to have been able to post it. He has therefore been in custody for a period of 9 months.
3. The State has treated the accused as a first offender.
4. Ms. Odembo for the accused has in mitigation on behalf of the accused. Counsel urged that the accused was remorseful for his action and that he and the deceased were friends. Counsel further urged that the accused was mentally tortured by his friends' death and prays for leniency.
5. Counsel urged that the accused is aged 46 years old, married to one wife and blessed with two children aged 8 and 12 years. Further to that, he was the sole bread winner to his family and that he earned his living by sharpening Knives.
6. Counsel further urged that the accused and deceased were drinking Changaa, when an argument ensued over Ksh.10/=. This led to the deceased hitting the accused with a metal bar who in self-defence picked up a knife and stabbed the deceased. Counsel urged that the accused was seeking a probation or non-custodial sentence.
7. Mr. Okeyo learned prosecution counsel urged that the family of the deceased were unhappy with the deceased death and were opposed to a non-custodial sentence. Counsel urged that the parents pleaded that accused be awarded a custodial sentence.
8. I have considered the accused mitigation as well as the prosecution sentiments.
9. This court called for a pre-sentence report. The Report was filed and I have considered it. I have noted that the accused admits to be highly temperamental and that he regrets the events of the material day leading to the demise of his friend. I have also noted that the accused family are willing to seek for forgiveness on behalf of the offender from the deceased family.
10. The Victim Impact Statement was incorporated in the pre-sentence report. I noted that the brother to the deceased stated that the deceased was hospitalized for a period of three weeks after the incident. This caused the family to take up loans to pay the accumulated hefty hospital bill. The deceased brother however stated that even though the family had suffered emotionally and financially, he holds no ill feelings towards the sister to the accused whom he meets occasionally given the fact that she resides near them. He was of the opinion that since the members of the public had beaten the accused up after the incident, there was a possibility that they could still be angered. The brother to the deceased contends that in the event the accused was to be given a non-custodial sentence, he should keep off Riruta satellite.
11. The Probation Officer has recommended a non-custodial sentence for the accused. She has proposed to have the accused undergo anger management, drug and substance abuse counselling. The Probation Officer stated that the office would also be in a position to facilitate

reconciliation between the two families.

12. The prosecution produced the accused P3 form. I noted that the doctor who examined the accused found that he had a displaced patella fracture and other serious injuries which he categorized as grievous harm. The Probation Officer in her report stated that the accused had suffered an injury after being hit by the deceased with a metal bar during the confrontation.

13. I have considered the circumstances of this case. It is evident from the facts filed in the plea agreement that the accused and deceased persons were drinking alcohol. The deceased turned belligerent as he asked for his Ksh.10/= and ended up attacking the accused with an iron bar causing him serious injuries. The accused acted in self-defence and stabbed the deceased out of which injury he later died. I find that the accused acted at the spur of the moment even though his action was excessive. His judgement was impaired considering that together with the deceased, they were under the influence of alcohol.

14. The sentence for the offence of manslaughter is prescribed under **Section 206** of the **Penal code** as life imprisonment. I however take cognisance of the fact that the accused is remorseful and together with his family are willing to seek forgiveness from the family of the deceased. The family of the deceased have also demonstrated that they are not opposed to the accused being given a non-custodial sentence safe for the fact that he should not set foot in Riruta satellite.

15. I have taken into consideration that the accused has been in custody for a period of 9 months. I have also considered the fact that the accused is aged 46 years and has saved the court considerable time by pleading guilty to the lesser charge of manslaughter.

16. Having taken all these factors into account, I find that the accused deserves a second chance.

17. Before giving the Probation order the court has a duty to find out whether the accused would be willing to serve such sentence.

18. The accused has expressed willingness to serve a probation term.

19. The court has explained and warned the accused that probation terms is a form of sentence and is not a discharge and that there are terms and conditions to be met. I have explained them as follows:

**(a) That He must serve under the supervision of a Probation Officer and that He must comply with terms and conditions set by them and instructions given.**

**(b) That He must be of good conduct and must not commit any offence during the probation period.**

**(c) He must keep company with persons of good behaviour.**

**(d) He must attend Anger Management, Drug and Substance Abuse Counselling as well as Guidance and Counselling sessions to be organized by the Probation Department.**

**(e) The Probation Office is directed to reconcile the family of the accused and that of the deceased.**

20. The accused is warned that if he breaches any of the conditions set above, he will be arrested and brought back to this court for sentence.

21. **The accused will serve a Probation term of 3 years.**

**DATED AT NAIROBI THIS 28<sup>TH</sup> DAY OF MAY, 2019.**

**LESIT, J**

**JUDGE**