



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAKURU**

**CRIMINAL CASE (MURDER) NO. 52 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**COLLINS KIBET CHEPKWONY.....1<sup>ST</sup> ACCUSED**

**SENTENCE**

1. The 1<sup>st</sup> Accused Collins Kibet Chepkwony together with another, Hillary Yegon Too *alias* Kipsang were jointly charged with the offence of murder of one Dennis Kipkoech Chepkwony on the 1<sup>st</sup> December 2017 at Nyota Location in Kuresoi Sub-County within Nakuru County.

Upon a plea bargain agreement the 1<sup>st</sup> accused pleaded guilty to the lesser charge of Manslaughter on the 6<sup>th</sup> March 2019, having been plainly and clearly explained in Kiswahili a language he stated to understand the import and sequel sentence that may ensue upon conviction.

2. A pre-sentence report has been prepared to assist the court in reaching an appropriate sentence.

Ms. Chemng'etich advocate for the 1<sup>st</sup> accused tendered mitigation on his behalf that the act by the accused was unintentional and committed the offence at a young age of 25 years is a first offender and the sole bread winner of his elderly and sickly mother. A non-custodial sentence was urged.

3. In passing sentence, the court ought to consider

- a) The period during which the accused person has been in custody.*
- b) The victim impact statement if any, made in accordance with Section 329 of the Criminal Procedure Code.*
- c) The stage in the proceedings at which the accused person indicated his intention to enter into a plea bargaining agreement.*
- d) Nature and amount of any restitution or compensation agreed to be made by the accused person.*

4. Further, the court may take into consideration the probation officer's report.

5. The principles and objectives of sentence are stated in the Judiciary's Guidelines on sentencing as well as in numerous court decisions, among them, the Supreme Court decision in **Francis Karioko Murwatetu & Another –vs- Republic Petition No.15 & 16 (consolidated) of 2015 (2017) e KLR.**

- 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) Possibility of reform and social re-adaption of the offender*

*h) Any other factor that the court considers relevant.*

6. The pre-sentence report is dated 25<sup>th</sup> April 2019.

The accused person is twenty five years old, and hails from a very poor background and upbringing. The deceased is brother to the accused and the offence was unintentionally committed when both the deceased and the accused were drunk and started fighting over some proceeds from a betting machine. He is extremely remorseful.

7. The family of the accused has fully forgiven the accused's actions. The local residents too have urged for court's leniency and to allow the accused back to the community as he had no prior criminal record. The court is urged to hand a non-custodial sentence.

8. The sentence for the charge of manslaughter upon conviction is provided under **Section 202 as read with Section 205 of the Penal Code** as life imprisonment.

In **Kiambu Criminal Case No. 18 of 2016 R –vs- Samuel Kariuki Kande (2017) e KLR, Ngugi J** handed a 3½ (three and a half) years imprisonment in similar circumstances.

In **Criminal Appeal No.40 of 2017 R –vs- James Kimosop (2017) e KLR, Muriithi J** sentenced the accused for the lesser charge of manslaughter to 3½ years imprisonment. The same sentence was meted to the accused in **R –vs- Philip Muthani Kathiwa (2015) e KLR.**

9. I have considered the above and that the accused has been in custody for one and half (1½) years.

For the above reasons, I sentence the accused to serve **a probation sentence under the Probation of Offenders Act for a period of one year under the supervision and directions of the Probation Office, Nakuru County. He shall report to the probation office, Nakuru County on the 24<sup>th</sup> June 2019 at 10.00 a.m.** for directions under the sentence failing which this non-custodial sentence will automatically lapse and the accused will be re-arrested and brought back to court for further orders and or alternative sentence.

It is so ordered.

**Dated, delivered and signed at Nakuru this 19<sup>th</sup> Day of June 2019.**

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**J.N. MULWA**

**JUDGE**