

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAROK

CRIMINAL CASE NO 38 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

KOIN OLE KUKUTIA.....ACCUSED

JUDGEMENT ON SENTENCE

1. The accused has already been convicted of manslaughter and the only issue before me is one of the appropriate sentence to be imposed. I doing so the court is required to take into account both the mitigating and aggravating circumstances.

2. The mitigating circumstances are as follows. The accused is a first offender and is a widower following the death of his wife in a road accident. He is now the sole bread winner of his four children and his 74 years old mother. The accused is remorseful as the deceased used to supply him with water. The accused has been in remand for one year and about ten months. In support of his submission, Mr. Masikonde cited the case of *Republic v. Philip Muthiani Kathiwa, (2015) Eklr*, in which the accused was sentenced to serve a sentence of probation for one year under the supervision of a probation officer.

3. The aggravating circumstances are as follows. The deceased died of severe head injury with left side epidural haematoma. A life has been lost.

3. Mr. Omwega has submitted that the case cited by counsel for the accused is distinguishable and is not binding on this court. He also submitted that this court did not make a finding that the accused acted in self defence.

4. I have considered all these matters. I find that the accused is a first offender and is a widower, who is supporting both his four children and his old mother. I also find that he has been in custody for one year and about ten months. The case cited is distinguishable. In that case the accused had been in custody for two and a half years and that both the family of the accused and the deceased had agreed to reconcile upon payment of customary compensation. In the instant case the family of the deceased told the probation officer that they will not accept reconciliation from the family of the accused, following threats from the victim's mother that she will commit suicide if any reconciliation is initiated. It is also important to point out that the father and brother of the victim stated that the mother of the victim developed hypertension after this incident.

5. In the light of above matters, I find that the appropriate sentence is five years, which I hereby impose upon the accused.

Judgement dated, signed and delivered at Narok this 19th day of June, 2019 in the presence of Mr. Masikonde for the accused and Mr. Omwega for the state.

J. M. Bwonwonga

Judge

19/6/2019