



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CRIMINAL CASE NO. 120 OF 2014

REPUBLIC.....PROSECUTOR

-VERSUS-

JACOB KARIUKI KIARIE.....ACCUSED

SENTENCE

1. The accused Jacob Kariuki Kiarie was on the 19th January 2015 charged with the offence of Murder of his minor son FK Contrary to **Section 203 as read with Section 204** of the **Penal Code**. He pleaded not guilty and the case was scheduled for hearing several times. No Prosecution witness testified.

Before the prosecution case could be heard, the prosecution and the accused entered into a plea bargain agreement.

2. On the 13th March 2019 the accused pleaded guilty to the lesser charge of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**.

He was given an opportunity to mitigate on the 23rd July 2019 which he did by his advocate Mr. Orege.

3. A social enquiry report on the accused was prepared prior to sentencing. It was filed on the 22nd February 2019. **Section 202** of the Penal Code defines the offence of manslaughter as

202(1) Any person who by an unlawful act or causes the death of another person is guilty of the felony termed manslaughter.

Section of the Penal Code states that any person

205 who commits the felony of manslaughter is liable to imprisonment for life.

4. Before passing sentence the court ought to inform itself as to the proper sentence to be passed by taking into account the evidence, nature of the offence and circumstances of the case, as well as any mitigating factors.

5. The purposes and objectives of sentencing as stated in the **Supreme Court Petition No. 15 and 16 (Consolidated) of 2015 Francis Karioko Muruatetu & Another –vs- Republic (2017) e KLR** are:

(1) **Retribution** - to punish the offender for his/her criminal conduct in a just manner.

(2) **Deterrence** – to enable the offender from committing similar offence subsequently as well as to discourage other people from committing similar offences.

(3) **Rehabilitation** - to enable the offender reform from his criminal disposition and become a law abiding person.

(4) **Restorative justice** – to address the needs arising from the criminal conduct such as loss and damage and to promote a sense of responsibility through the offender contribution towards meeting the victims needs.

(5) **Community protection** by incapacitating the offender.

(6) **Denunciation** – to communicate to the community's condemnation of the Criminal conduct.

6. Further and as stated in the **Muruatetu case** (Supra), the following guidelines ought to be considered before sentencing:

- Age of the offender
- Being a first offender
- Whether offender pleaded guilty
- Character and record of the offender
- Commission of the offence in response to gender-based violence
- Remorsefulness of the offender
- The possibility of reform and social re-adaptation of the offender
- Any other factor that the court considers relevant.

7. I have taken into account the above factors as well as the social enquiry pre-sentencing report.

The accused committed the offence at age of 35 years. He is married and has three children including the deceased. His wife absconded before the commission of the offence.

He was left to fetch for his minor children through casual jobs.

8. I have taken into account the information in the social enquiry report as well as the spirited mitigation by his advocate Mr. Orege.

The accused has been in custody for well over five years. He is remorseful and regrets having caused the death of his first borne son. He seeks for leniency, a non-custodial sentence to go back and take care of his children.

His mother is willing and ready to accept and rehabilitate him as well as start him off with a residential house for him and his children.

The community at large speak well of the accused save for his bad drinking habits.

9. For the foregoing an immediate non-custodial sentence would not be appropriate. The offence is serious and beastly. I will sentence him to serve ten (10) years imprisonment from the date of this sentence.

Right of appeal within 14 days is explained to the accused.

Delivered, Dated and Signed at Nakuru this 31st Day of July 2019.

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J.N.MULWA

JUDGE