



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIVASHA**

**(CORAM: R. MWONGO, J.)**

**COURT CRIMINAL CASE NO. 21 OF 2018**

**REPUBLIC .....PROSECUTION**

**VERSUS**

**FRANCIS NDEGWA WAMBUGU.....ACCUSED**

**SENTENCING JUDGMENT**

1. The Accused is charged with the murder of his brother George Mukundi Wambugu on 8<sup>th</sup> December 2018, contrary to **Section 203** as read with **Section 204** of the Penal Code. The facts are that on 8<sup>th</sup> December 2018 at around 21.00 hours the accused went to the house of his sister Susan Nyambura Njuguna. As he was drunk he insulted the sister calling her a dog and a prostitute.
2. The accused then left the compound and returned with a panga and a slasher and started damaging his sister's house by cutting and removing the iron sheets on the wall. His sister, Susan, called her elder brother George Mukundi (the deceased) to assist her calm down the accused so he could stop any further destruction of her house.
3. When the deceased arrived and found the accused removing the iron sheets of his sister's house, he grabbed the accused to stop him. The deceased then proceeded to the accused's house and begun removing iron sheets in a bid to replace those destroyed by the accused. A fight ensued between the two men.
4. The accused grabbed a hammer the deceased was using and hit him several times on the head. The deceased fell down bleeding profusely. Neighbours were attracted by the commotion and arrived at the scene. They reported the incident at Moi Ndabi Administration Police Post and officers visited the scene. Scene of crime officers from Naivasha Police Station also arrived at the scene. The deceased's body was taken to Naivasha District Hospital Mortuary.
5. On 10<sup>th</sup> December, 2018, the accused was arrested after he presented himself at Moi Ndabi Administration Police Post. A post mortem was conducted on the deceased's body by Titus Ngulungu on 13<sup>th</sup> December, 2018. The report concluded that the cause of death was severe head injury extended by extensive skull and brain lacerations due to multiple blunt force trauma in keeping with homicide.
6. The accused was arraigned in court on 13<sup>th</sup> December 2018, and counsel, Mr Owuor was appointed to act for him. On 20<sup>th</sup> December 2018 the accused pleaded not guilty. On 8<sup>th</sup> March 2019, at pre-trial mention, the defence sought to enter into a plea bargaining agreement pursuant to **Section 137** of the Criminal Procedure Code. This was finally concluded and signed on 18<sup>th</sup> July 2019, and adopted by the court on the same day. The accused was convicted with the offence of Manslaughter. Counsel, the Accused, the Prosecutor and the Court signed the Court Form for Recording Plea Agreements.
7. The court having ordered and received a pre-sentence report from the Naivasha Sub-County Probation Officer, the accused gave his mitigation on 18<sup>th</sup> July, 2019,
8. In mitigation, counsel noted that that the accused had no previous criminal record and that this was his first rub with the law. That the accused was remorseful and pleaded for mercy, that the incident occurred when he was intoxicated, and it arose out of a disagreement. That the person he killed was his own brother was even more painful, and he had since reformed and undertaken not to indulge in drinking.
9. The accused stated that he has a wife and seven children, most of whom had dropped out of school. He stated that the youngest was eleven months old. He pleaded for a non-custodial sentence for the sake of his family, to enable him to re-unite with his wife, children and siblings, all of whom, he stated, are willing to reintegrate him into their lives.
10. I have also considered the Probation Officers Report filed on 17<sup>th</sup> July 2019, which is stated to have relied on information from the court

file, the police file, the offender, the offender's relatives, brothers and sisters, the offender's neighbours, the area administrator and the probation officers observation and study of the accused's home area of Ngondi.

11. The probation report shows that the accused's family had ten acres of land which was sub-divided when the father died. The siblings thereafter divided the land and sold it, using the proceeds for drinking. The accused sold all his land and wanted to take over the land belonging to his sister. The land issues caused tension and fights within the family. Most of the family are alcohol addicts.

12. The community's attitude towards the accused is that they were initially bitter but tempers have since cooled down. The community does not object to the accused being released on a non-custodial sentence. However, the area chief advised since the land issues were not resolved, the accused if released should temporarily re-locate to Teachers Estate in Nakuru where his younger sister Ann Wanjiru lives. She is willing to accommodate/take care of him there.

13. The Probation Officer noted that the accused is 43 years old and is the family's sole bread winner. His wife is jobless and all seven children are of primary school age. The community and his wife are all willing to accept him home and help the accused reconstruct his life.

14. The recommendation of the Probation Officer is that the accused may be released on a probationary sentence of three years optimistic that the accused will benefit from guidance and counselling therapy. He recommends that, if released, the accused should relocate temporarily to Nakuru Teacher Estate to live with his sister.

15. Having carefully considered the accused's mitigation and the Probation Officer's Report, my view is as follows. The accused person suffers alcoholism. That is a disease once addiction sets in and requires that the victim be given the opportunity for rehabilitation. Whilst in custody the accused will not have access to alcohol and this may force him to "dry" out, particularly if he has not himself made conscientious choice to attend rehabilitation.

16. I am of the view that whilst custodial sentences may not necessary lead to rehabilitation of offenders, they may shock on offender to a proper realization of the wrong habits that have led them into the situation they are facing. The accused has been incarcerated since 10<sup>th</sup> December 2018. That is about nine months. I will take that period into account. I also take into account that the accused cause the death of another human being whilst he was intoxicated. That, too, is no small matter, and it is important that the courts should not send a message out that a person may get intoxicated and cause the death of another, even a family member, and not suffer the full consequences of the offence.

17. Taking all matters into account, I think the proper course is to sentence the accused to a sentence of ten (10) years which will be served as follows:-

(a) The first eighteen (18) months will be custodial including the period since his arrest.

(b) The next thirty six (36) will be non-custodial and the accused will be on probation and will relocate to Nakuru Teachers Estate under a rehabilitation programme designed by the Naivasha Sub-County Probation Officer in liaison with Nakuru Probation Officer, who shall keep a record of the accused's attendance and completion of the rehabilitation programme.

(c) Should the accused not fall afoul with the law during the aforesaid thirty (36) months, he shall be entitled to be set at liberty.

(d) If however the accused falls afoul of the law during the probation period and is convicted he shall be liable to serve the full sentence of the (10) years earlier indicated

18. Right of appeal fourteen (14) days

19. Orders accordingly.

**Dated and Delivered at Naivasha this 30<sup>th</sup> Day of September, 2019**

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**RICHARD MWONGO**

**JUDGE**

Delivered in the presence of:

1. Maingi for the State
2. Owuor for Accused
3. Accused - Francis Ndegwa Wambugu - present
4. Court Clerk – Quinter Ogutu