

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 18 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

MASEKE STEPHEN MAKORE.....ACCUSED

RULING ON SENTENCE

Maseke Stephen Makore, the accused herein, is charged with manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The particulars of the offence are that on the 15th day of March 2018 in Stima Court in South B within Nairobi County murdered Austin Okoth Otieno. Initially the accused was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code in the similar circumstances as in this charge. The accused had pleaded not guilty to the charge of murder. Following a Plea Bargaining Agreement entered into between the accused and the State through the Office of the Director of Public Prosecutions, the offence was reduced to manslaughter to which the accused pleaded guilty on 27th June 2019.

Following the accused's plea of guilty to manslaughter, the circumstances giving rise to this offence were presented to the court. From these circumstances it is clear that the accused who worked for Radiance Security Firm was accused by fellow colleagues that he has stolen a mobile phone belonging to one Victor a colleague. This was on 15th March 2018. It was said that Victor had left the phone at the Sentry Box in Stima Court in South B, Nairobi. The accused denied having taken the phone. This led to a misunderstanding between them. The issue was resolved by their superiors. However, later on that day the deceased and Victor returned to the place where the accused was and offered to shake hands with the accused in order to bury the hatchet. It is at this stage that the deceased hit the accused with a club on the left side of his head while Victor held the accused. At that time the accused was eating a mango using a knife in his hand. He stabbed the deceased with the knife on his left thigh. The deceased bled from that wound and died as a result of the excessive bleeding. The findings of the pathologist are that the cause of death of the deceased was exsanguination due to penetrating sharp force trauma to the left thigh.

The accused admitted the facts as presented by the Prosecution Counsel. Consequently, this court found him guilty for the offence of manslaughter on his own plea of guilty. The court also called for a pre-sentence report from the probation officer. The report was filed on 2nd October 2019. I have read the report. The family of the accused is supportive of him and has called for a non-custodial sentence. However, the family of the deceased feels that justice will be served if the accused is placed on custodial jail term.

In mitigation the accused told the court that he is very remorseful for the events that led to the death of the deceased. He told the court that he is a first offender; that he has a wife and two children, a daughter and a son both of tender years; that he is the sole bread winner for his family and that he has resolved to change and continue living as a law abiding citizen. He urged the court to sentence him to a non-custodial sentence.

On the other hand, the prosecution told the court that the choices the accused made led to the loss of life of the deceased. It was submitted that manslaughter carries a maximum life sentence and that although life sentence has not been defined in this country it has been defined in other jurisdictions to mean 20 years imprisonment. This court was asked to give 20 years in jail.

I have considered this matter. This court was not given previous records of the accused. I will therefore treat him as a first offender. I take into account that a life has been lost. The family of the deceased cannot be expected to forgive so easily. However, the circumstances of this case show that the deceased and his colleague Victor attacked the accused even after the issue of the lost phone was resolved. The accused was at the time at his place of work. He was eating a mango using a knife. The deceased and Victor approached him and offered him food which he declined. Both attacked him. This was reckless behavior given that the accused was holding a knife. It is natural that one must defend himself when attacked and in this case two people had needlessly attacked the accused. The accused stabbed the deceased on the thigh. It is obvious to this court that the intention was not to kill the deceased but an act of self defence. It is unfortunate that the delay to take the deceased to hospital led to his excessive bleeding that cost his life. Had he been taken to hospital immediately after the stabbing, it is clear to me that his life could have been saved.

Having taken into account all the factors of this matter and considered the matter it is my view that the circumstances giving rise to the death of the deceased are sad but could have been avoided had the deceased and Victor let the matter rest after the issue between them and the accused had been resolved. In exercising my discretion in this matter, it is my considered view that justice will be served if the accused is sentenced to serve three years non-custodial sentence under the supervision of the probation officers. I therefore sentence the accused to three years non-custodial sentence under the supervision of the probation officer. It is so ordered. The right of appeal within 14 days from today's date has been explained to the parties.

Dated, signed and delivered on this 31st day of October 2019.

S. N. Mutuku

Judge