



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CRIMINAL APPEAL NO. 19 OF 2016

REPUBLICPROSECUTION

VERSUS

SAMSON KATANA MURAMBA.....ACCUSED

CORAM: Hon. Justice R. Nyakundi

Ms. Sombo for the state

Mr. Nyongesa for the accused person

SENTENCING RULING

This is a sentence following the conviction of the accused person herein after a full trial. The accused was charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code but he was convicted of a lesser offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code after having taken into consideration the totality of the evidence tendered by both the prosecution and the defence, the submissions and exhibits in support of their respective cases.

Upon conviction and in order to assist the Court in reaching an appropriate sentence, the Court called for mitigation from the offender, the Pre-sentence Report, in accordance with section 137I of the CPC. The said section provides as follows:

“137I. Address by parties

(1) Upon conviction, the court may invite the parties to address it on the issue of sentencing in accordance with section 216.

(2) In passing a sentence, the court shall take into account—

(a) the period during which the accused person has been in custody;

(b) a victim impact statement, if any, made in accordance with section 329C;

(c) the stage in the proceedings at which the accused person indicated his intention to enter into a plea agreement and the circumstances in which this indication was given;

(d) the nature and amount of any restitution or compensation agreed to be made by the accused person.

(3) Where necessary and desirable, the court may in passing a sentence, take into account a probation officer’s report.”

In *Republic v. Philip Muthiani Kathiwa*, Machakos High Court Criminal Case No. 14 of 2015, the Court considered the issue of appropriate sentence in a case of manslaughter upon a plea of guilty and said:

“The Principles

3. The objects of a sentence is, primarily, to punish for an offence and to reform the accused in such manner as to, as appropriate in

the circumstances of the case, deter the repetition of the offence by the accused and others taking into account the moral blameworthiness of the accused, the prevalence of the crime and the situation of the accused himself.

4. Section 17 of the Penal Code provides that criminal responsibility for the use of force in the defence of person or property shall be determined in accordance with principles of English Common Law.

The question in every case is whether the force used by the accused in self-defence is, in the circumstances of the case, excessive. See *Mokwa v R* (1976-1980) KLR 1337. *The accused herein acted on self-defence when he tried to defend himself and others who the deceased while drunk had attacked by with a panga. The use of the poisoned arrow on the deceased, in the circumstances if this case, was excessive force, and the accused was guilty of Manslaughter.*

5. In considering the appropriate sentence, same offences should attract similar consistent penalties. In *Andrew v R* (1976-1980) KLR 1688, in a case where the appellant and his co-accused had in a fight started by them the deceased was stabbed, the Court of Appeal found manifestly excessive and reduced a sentence of imprisonment for 11 ½ years to imprisonment for a term of 5 years.

In *Orwochi v R* (1976-1980) KLR 1638, the Court of Appeal reduced as manifestly excessive the sentence of 4 years imprisonment for an appellant who, in circumstances similar to this case, had in self-defence during an ensuing struggle stabbed the deceased using the panga by which the deceased had attacked him, to such sentence as ensured the immediate release of the appellant a young man aged 25 who had been in custody for 15 months before the sentence in the trial court and six months before appeal was heard and determined.

6. *The decision of the Court of Appeal in Muoki v R* (1985) KLR 323 (Madan, Kneller JJA. & Platt, Ag. JA) is relevant. The Court approved a sentence of 3 ½ years for manslaughter as not being manifestly excessive as to warrant interference by the Court of Appeal and also approved the practice, then, of courts taking into account the period that the accused had been in remand in considering what term of imprisonment to impose. The practice of accounting for time spent in custody was given statutory backing in the 2007 amendment to section 333 (2) of the Criminal Procedure Code (Act No. 7 of 2007) which inserted a proviso that

“Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

In the present case, there is no doubt that a precious/valuable life was lost under appalling circumstances in the sense that the deceased met his last breath after having been assaulted by the accused and his brother, and such loss being irreparable.

However, the defence has invited the Court not to merely look at the irreparable loss of life and the decrepit circumstances of the death itself but that as it arrives at an appropriate sentence for the offender it ought to take into account any other pertinent factors which maybe in mitigation of the sentence to be meted out herein.

The accused was a first offender. He is currently age 31 years old. At the time he was arrested he was aged about 28 years. Thus, prior to his arrest, he had lived a blameless life for a good twenty-eight years. The defence urged this court, therefore, not to lose sight of the fact that he is a first offender as well that he was relatively youthful at the time of committing the offence and he remains fairly a young adult at the time of sentencing.

It is in such cases that the law encourages the Courts to consider terms of imprisonment that are not too long. However, the court notes that the new threats to human life are now within the family circle. The bitter reality has been families no longer resolve their conflicts through mediation but by means of the sword.

Time has come for the nation to look for answer to a number of questions. Such as why there is so much vengeance among family members that justifies death. How severe is the provocation to warrant termination of right trial of another family member. The importance of right to life is God given and unless under immense and excusable provocation, every citizen has a right to preserve and protect right to life under Article 26 of the Constitution.

I have noted that the accused was not arrested soon after the commission of the offence. Further that he remained remanded up to the time of sentence. Thus, he has been in custody for about three years. I take cognizance that Section 333(2) of the CPC requires that sentence runs from the date of arrest. I have considered the same in mitigation. What the accused did not do is to cooperate in the process of investigation and even during trial process as he persisted with a story that was quite clearly not truthful. To my mind, that displays or exhibits the appropriate demeanor for somebody who was contrite.

I have considered the pre-sentence report which indicates that the accused expressed remorsefulness and that he is a person who is capable of reform even under a non-custodial sentence. His family, specifically his elderly mother wants her son to be re-integrated with the rest of family to resume his responsibilities as a father. In my view, as much as the accused responsibility towards his family may be taken as a mitigating factor, it is not lost that at the moment he decided to act in manner that was likely to deprive his father's life, he abdicated his responsibilities.

The Court shall not also lose sight of the fact that the sentencing process is a balancing act which aims at serving the interests of the justice system as may be reflected in the interest of the victim's family, the society and the accused's interests. Such process is notoriously a very problematic task but the Court in doing so exercises its discretion judiciously. Consequently, the final discretion resides with the Court.

The circumstances of this case do not warrant a non-custodial sentence. In arriving at a meaningful and befitting sentence, I shall take as primary focus the accused's reformation and rehabilitation, the need to deter future offenders from committing acts which may lead to loss of life.

I'm of the view that, the maximum sentence of imprisonment for life is reserved for the worst offence and worst offender. This Court has to balance the mitigating and aggravating factors herein before arriving at an appropriate term of years of imprisonment. In the present circumstances after considering the aggravating and mitigating factors and that the defendant has already spent about three years in custody before being released on bail this Court sentences the defendant to serve a sentence of 7 years imprisonment from the date of his indictment.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 24TH OCTOBER, 2019.

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REUBEN NYAKUNDI

JUDGE