



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCR NO. 7 OF 2019

REPUBLIC.....PROSECUTION

VERSUS

FRANCIS MUNYALO.....1ST ACCUSED

NICODEMUS MUTINDA MUHIA2ND ACCUSED

RULING ON SENTENCE

1. **Francis Munyalo** and **Nicodemus Mutinda Muhia** who are the 1st and 2nd accused respectively were jointly charged with the murder of their brother **Sebastian Munyao** contrary to Section 203 as read with Section 204 of the Penal code on the 9th February, 2019.

2. Plea was taken on 7th May, 2019.

3. Upon a plea bargain agreement being entered into, the charge was reduced to manslaughter contrary to Section 202 as read with Section 205 Penal Code. Both 1st and 2nd accused were convicted on their own admission on 17th September, 2019.

4. In mitigation, Mr. Masaku appearing for them submitted that they were remorseful and had since transformed. That they are family men and their father was the one now taking care of their families.

5. He further stated that the accused persons had sought for forgiveness from their family and clan and they have been forgiven. They are aged 42 years and 38 years respectively.

6. This court called for pre-sentence reports which were filed on 16th October, 2019. Though separately filed, the content in the reports is similar. The reports show that the earlier hostility by the clan against the accused persons has reduced drastically. The reports seem to portray the deceased person as a criminal, who had been in and out of prison. That he never settled down in marriage, as the five (5) wives he had married had all left him.

7. The post mortem report (EXB1) shows that the deceased died of multiple system injuries (*intracranial hemorrhage*) and chest wall injuries (*fractured ribs*) caused by blunt force trauma. The details of the report show that the deceased suffered the following injuries.

- **Deep cut wound on the parietal region (head) measuring 6cm.**
- **Multiple abrasions on the scalp/face.**
- **Deep cut wound on the upper hip – 3cm.**
- **Bruise on occipital region 4cm x 3cm**
- **Multiple bruises on the neck.**
- **Dry blood on the nostrils and ears.**
- **Fractured left 3rd, 6th and 7th anterior ribs.**

8. All these injuries were inflicted on the deceased by the 1st and 2nd accused who were his younger brothers. Did they have to inflict such

serious injuries on their own brother for whatever reason? The deceased died a very painful death at the hands of the people who ought to have loved him and protected him.

9. I have considered the mitigation and the contents of the pre-sentence reports. I have also taken into account the fact that the accused persons pleaded guilty to the reduced charge of manslaughter. They have also been in prison custody for 8 months.

10. All this taken together with the cruel manner in which the deceased met his death, I find that the accused persons deserving of a prison term.

Order:

1) Each accused to serve three (3) years imprisonment.

Orders accordingly.

Delivered, signed & dated this 23rd day of October 2019, in open court at Makueni.

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H. I. Ong'udi

Judge