



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL CASE NO 24 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DUNCAN KIPLANGAT MAPENGO.....ACCUSED**

**RULING SENTENCE**

1. Duncan Kiplangat Mapengo (“Accused Person”) was originally charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He was accused of killing, with premeditation, Kipkosgei Ruto on the 1<sup>st</sup> day of April, 2015 at Mariashoni Elburgon in Molo District within Nakuru County.
2. The Accused Person pleaded not guilty to the charge of murder and trial commenced. The Prosecution called eight witnesses. Before the Prosecution could close its case, the parties negotiated a plea agreement.
3. By a Plea Agreement dated 22/05/2018, the Accused Person pleaded guilty to the charge of manslaughter contrary to section 202 as read together with section 205 of the Penal Code. After due caution, and after satisfying myself that the Plea Agreement was entered into knowingly and voluntarily, I recorded a conviction and called for pre-sentencing report and victim impact statements (if desired) and set the case for a sentencing hearing.
4. The agreed facts of the case are laid out in the Plea Agreement as follows:

That on the 1<sup>st</sup> day of March, 2015, at about 8:00pm, the Accused Person was in [the] company of other two people namely Julius Mapengo and Kushoto who are step-brother and a relative respectively at Mariashoni trading centre within Elburgon. The three decided to go to Kwa Daisy pub for a drink. While there, they all ordered for drinks and started drinking. At about 9:00pm, the Deceased (Simon Kipkoskei Ruto) also entered the said pub and sat at the counter with other customers. While at the counter, a quarrel ensued between the Accused and his step-brother over unknown matter and since both were all drunk, a fight ensued between the Accused and Julius Mapengo who is his step-brother. Both were armed with knives.

Kushoto, a relative joined Julius Mapengo to beat the Accused Person using a local weapon called Njaranga. Accused was hit on the left side of the cheek below the eye as the Deceased and other customers intervened to separate them from fighting and calm them down, but unfortunately, the Deceased was stabbed on the right side of the chest once by the Accused Person whose intention was to stab his step-brother. Unfortunately, the Deceased passed away at the scene while awaiting to be taken to the hospital.

The OCS Elburgon Police Station was informed of the incident. He visited the scene and later the body was taken to Elburgon Nyayo Hospital mortuary, The Accused was arrested and escorted to Elburgon Police Station for investigations where he was later charged with the offence of murder which has now been substituted with manslaughter.

5. In mitigation, the Defence submitted that the Accused Person is remorseful; and that he and his family had taken steps to reconcile with the family of the Deceased. The Probation Report filed in Court also noted that the Area Chief was mediating reconciliation efforts between the family of the Accused Person and that of the Deceased.
6. The Defence submitted that the Accused Person did not intend to cause the death of the Deceased; and that he was a father of three children and the sole bread winner of the family. The Defence also noted that the family of the Deceased was not opposed to the Accused Person being released on probation. The Defence pleaded with the Court to impose a non-custodial sentence as recommended in the Probation Report.
7. Mr. Chigiti, the Prosecutor, confirmed that the Accused Person is a first offender. He, however, told the Court that in view of the fact that

a precious life of an innocent person who was not involved in the fight was lost, the Prosecution had recommended a custodial sentence of three years imprisonment.

8. I have considered the following relevant factors in fashioning an appropriate sentence for the Accused Person in this case:

- a. The Accused Person pleaded guilty to the reduced charge of manslaughter and therefore saved the family the anguish of having to testify and also saved much judicial time.
- b. The Accused Person appears to be genuinely remorseful and is committed to pursuing reconciliation with the family of the Deceased using traditional customs as accepted by the Deceased's family.
- c. The family of the victim has indicated that they are not opposed to the Accused Person being committed to non-custodial sentence.
- d. The Accused Person is a first offender.
- e. The Probation Report is favourable and recommends non-custodial sentence which, it says, will provide an opportunity for the Accused Person to be rehabilitated.
- f. The circumstances of the crime do not point to a particularly well-planned, depraved, or violent conduct on the part of the Accused Person which should attract societal opprobrium or disapproval in the form of a prison sentence.

**9. Given all these factors, I have concluded that the circumstances of this case do not call for a custodial sentence and that no sentencing objective will be achieved by his incarceration. I have noted that the Probation Report recommends non-custodial sentence. I, therefore, sentence the Accused Person to serve a Probation Sentence for a period of three years.**

10. Orders accordingly.

**Dated and Delivered at Nakuru this 19<sup>th</sup> December, 2019.**

.....

**JOEL NGUGI**

**JUDGE**