



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

CRIMINAL CASE NO. 5 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

PETER MAINA KARIUKI.....ACCUSED

SENTENCING

1. **PETER MAINA KARIUKI (Maina)** was convicted, by this court on **31st January 2018**, of the **offence of manslaughter contrary to section 202 of the Penal Code**.

2. Under **section 205** of the Penal Code the maximum sentence for manslaughter is life. Before sentencing Maina this court requested the probation office to provide pre-sentencing report. This court also requested for a victim impact report of the deceased family. The probation report was provided.

3. The probation officer by his report noted that the deceased family except one had come to terms with the death of their kin. The one who had not was the sister of the deceased who according to the report suffered trauma which in the view of the probation officer required debriefing and counselling sessions.

4. The probation officer was of the view that the families of the deceased and of Maina need to be reconciled, and that the community area could not pose any threat to Maina.

5. The prosecution stated that Maina had no previous conviction and that he should be treated as a first-time offender. The prosecution further submitted that the court needed to consider the views of all parties expressed in the probation report but cautioned that the court needed to consider the offence committed by Maina resulted in the death of an innocent man, and therefore sought a custodial sentence.

6. The counsel for Maina informed the court that he was remorseful and that he regretted the circumstances under which the offence occurred. Maina has four children two of whom are in secondary school. He is the sole bread winner of the family. The counsel therefore sought for non-custodial sentence.

7. I have considered the probation report and the learned counsel's submissions. The Supreme Court in the case of **Francis Karioko Muruatetu & Another Vs Republic Petition Number 15 of 2015** discussed the provisions of **section 329** of the Criminal Procedure Code which provides:-

“The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed.”

8. The Supreme Court in regard to that section had this to say in the case of Karioko Muruatetu (supra):-

“..... It is without a doubt that the court ought to take into account the evidence, the nature of the offence and the circumstances of the case in order to arrive at the appropriate sentence.”

9. The facts of this case are that Maina was found by the deceased in a maize Plantation in the company of the deceased's wife. The prosecution proved deceased found Maina having sexual intercourse with his wife. A fight ensued and Maina fatally injured the deceased.

10. This court would need to consider some cases which will assist it to reach a just decision in regard to the sentencing of Maina. In the case **R v Scott (2005) NSWCCA 152 Howie J Grove and Barr JJ** stated:

“There is a fundamental and immutable principle of sentencing that this sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed in the circumstances of the crime committed.... One of the purposes of punishment is to ensure that an offender is adequately punished..... a further purpose of punishment is to denounce the conduct of the offender.”

11. In a New Zealand decision namely **R vs AEM (200)** it was decided:

“... One of the main purposes of punishment.... Is to protect the public from the commission of such crimes by making it clear to the offender and to other persons with similar impulses that if they yield them, they will meet this punishment.”

12. In **R Harrison (1997) 93 Crim R 314** it was stated:-

“Except in well- defined circumstances such as youth or mental incapacity of the offender.... Public deterrence is generally regarded as the main purpose of punishment, and this objective considerations relating to particular prisoner (however persuasive) are necessarily subsidiary to the duty of the courts to see that the sentence which is imposed will operate as a powerful factor in preventing the commission of similar crimes by those may who otherwise would be tempted by the prospect that only light punishment will be imposed.”

13. There is no doubt that Maina committed a serious offence which resulted in the death of an innocent man. In this court’s view and bearing in mind the seriousness of the offence and the principles set out in the cases above there is need for Maina’s sentence to be Custodial.

14. This court hereby sentences **Peter Maina Kariuki** to **4 years** imprisonment. The security documents deposited in this court by the sureties in this matter shall be released to the respective persons.

DATED and DELIVERED at NANYUKI this 28th day of FEBRUARY 2018.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant – Njue/Mariastella

Accused: Peter Maina Kariuki

For Accused.....

For state:

COURT

Sentence delivered in open court.

MARY KASANGO

JUDGE