



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT VOI
CRIMINAL CASE NO 5 OF 2017
REPUBLIC
VERSUS
PAUL KITALA MWAWASI
SENTENCING

1. The Accused person was first arraigned in court on 19th June 2017. He pleaded not guilty to the charge on 31st July 2017 and a plea of not guilty was entered. The State was to call eight (8) witnesses to support its case. When the matter came up for hearing on 31st October 2017, Miss Anyumba for the State informed this court that the office of Directorate of Public Prosecution (ODPP) had written to the Accused person for purposes of entering a Plea Bargaining Agreement on 13th December 2017.

2. The said Plea Bargaining Agreement was signed by both parties. On 20th December 2017, the new charge for manslaughter contrary to Section 202 as read with Section 205 of the Penal Code Cap 63 (Laws of Kenya) was read to the Accused person and he pleaded guilty to the offence where upon he was convicted on his own plea of guilty.

3. This court then directed that the Pre-Sentencing Report be prepared by the Probation Office. The same was filed on 13th February 2018. Mr Anthony M Piri, Probation Officer, Voi explained how the deceased, who was the Accused person's father, had taken over the dual role of a mother and father to bring up the Accused person and his seven (7) siblings after their mother, who was of unsound mind, committed suicide when the children were of tender ages.

4. The Pre-Sentencing Report painted the Accused person as a victim of circumstances as a result of his father's failure to cope with his role to bring him and his siblings up, who then took up to drinking alcohol and being abusive and was a person of bad antecedent. His advocate, Mrs Isika, reiterated the sentiments of the Probation Officer who recommended that he be given a non – custodial sentence.

5. The State was non-committal on this sentencing arguing that justice had to be done as a crime was committed. This court noted the State's observations that the Accused person was a first offender. As was correctly pointed out by Mrs Isika, his advocate, he saved this court precious judicial time when he pleaded guilty to the offence of manslaughter.

6. The circumstances of this case were that the deceased was drunk and after he came home, he started being abusive. The Accused person was fed up and a fight ensued. He hit the deceased with a rod resulting in his death. There did not appear to be any malice aforethought. It was a crime of passion, committed in anger.

7. Consequently, although an offence was committed, the deceased was the initial aggressor at the time of the fight. The Accused person was a first offender. Doing the best it could, this court was of the considered view that as the Accused person was very remorseful of what he did, the siblings though losing a father, were still willing to reconcile with him, the neighbours were willing to integrate with him and he had been in custody for about eight (8) months, a non-custodial sentence of four (4) months would be adequate to administer justice for the deceased.

8. Accordingly, I hereby sentence the Accused person to one (1) year imprisonment. However, as he had already served eight (8) months imprisonment, this court hereby orders that he serves a non-custodial sentence of four (4) months under the Probation Office, Wundanyi.

9. For the avoidance of doubt, the sentence of four (4) months, non – custodial in nature that has been imposed upon the Accused person herein, is a Community Service Order (CSO).

10. Orders accordingly.

DATED and DELIVERED at VOI this 14th day of February 2018

J. KAMAU

JUDGE

In the presence of:-

Mrs Isika – for Accused

Miss Anyumba - for State

Susan Sarikoki – Court Clerk