



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

HCCR NO 21 OF 2017

[FORMERLY ELDORET HCCR 13 OF 2014]

REPUBLIC.....PROSECUTOR

VERSUS

ALEX ROTICH CHEBON.....ACCUSED

JUDGMENT

1. The accused was on 10/2/2014 charged with murder contrary to section 203 as read with 204 of the Penal Code. Following plea bargaining the charge was reduced to one of manslaughter contrary to section 202 as read with 205 of the Penal Code.
2. The court examined the accused and determined that his plea agreement was voluntary and noting his fitness to plead certificate dated 21/8/2017 accepted the plea agreement, whereupon the lesser charge of manslaughter was put to the accused who pleaded guilty hereto and was consequently convicted on his on plea of guilty on his acceptance of the facts.
3. The facts of the case as read and explained to the accused who accepted them were as follows:

“7. On the 1st day of February, 2014 at around 2.30 pm, the accused left Ngolbelon trading centre and went to River Cheresha where he was to take a bath. He walked down the river and found the deceased who was armed with arrows. The deceased started threatening the accused asking him whether he knew his children and that he was having a love affair with the deceased wife with whom they had separated. The accused responded that they should go to the deceased’s father in law to discuss that matter. When they arrived at the homestead of the deceased father-in law, the deceased went straight to his ex-wife’s house where they started arguing with her. In the process, the ex-wife of the deceased managed to grab the arrows from him. The accused on the other hand left the homestead but the deceased followed him. The deceased soon caught up with the accused and they started arguing. The argument culminated into a fight. The accused threw the deceased on the ground where he hit himself on the head and died on the spot. The accused surrendered himself at the Marigat Police Station on the 2nd day of February, 2014 where he was arrested. Police from Marigat visited the Scene the same day and took photographs of the body of the deceased. The body was taken to Kabarnet District Hospital Mortuary. Post-mortem on the body of the deceased was done on the 9th of February, 2014 and the cause of death was established to be brain herniation as a result of increased intracranial bleeding and pressure secondary to server brain injury. The accused was taken to court and charged with the offence of murder which has now been reduced to manslaughter. The accused person was thereafter presented before the doctor at Moi Teaching and Referral Hospital for mental assessment who confirmed he was mentally fit to stand trial.

4. In mitigation, counsel for the accused urged the court to pass a lenient sentence having regard to youthful age of the accused and of the fact that the circumstances of the case points to the deceased as having been the aggressor and therefore the unfortunate matter of the misfortune.
5. The DPP was not opposed to a non-custodial sentence as it was indicated that there was a likelihood of reconciliation because the parties were relatives. However, the Probation Officer’s Report on pre-sentence inquiry, concluded that the case was unsuitable for non-custodial sentence as follows:

“CONCLUSION

Your lordship, the victim’s immediate family strongly opposed non-custodial sentence and the local administration leaders also noted that reactions from deceased family are unpredictable if the accused is ordered to serve non-custodial sentence. Both the deceased and the accused family confirmed the absence of reconciliation which is a key ingredient for peaceful coexistence of communities at grassroots level and therefore non-custodial sentence seem to be inappropriate.

RECOMMENDATION

From the negative sentiments expressed by the deceased's family, the local community and absence of reconciliation, non-custodial sentence seems inappropriate. The accused is recommended to be dealt with otherwise. However this is subject to court's discretion."

Determination

6. Having considered the circumstances of the case and having convicted the accused for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code, this court passes sentence, taking into account that the accused has been in custody since 10/2/2014 when first brought before the Court, and has therefore been in custody for 4 years pending conclusion of his trial. I consider that a sentence of imprisonment for 8 years to be reckoned from the 10/2/2014, will meet the justice of the case when the court considered that with remission for the good conduct, the accused who is said to be an orphan aged 28 years should be able to come out of prison still at a youthful age, and he can engage in productive activities that may help him support his younger siblings

Order

The accused is sentenced to serve 8 years imprisonment for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code. The sentence commencing on 10/2/2014. Pursuant to section 333 Proviso of the Criminal Procedure Code.

DATED AND DELIVERED THIS 20TH DAY OF MARCH 2018

EDWARD M. MURIITI

JUDGE

Appearances:

Mr. Chepkilot for Mr Miyenda for Accused.

Ms. Macharia Ass. DPP.