



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO. 63 OF 2016

REPUBLIC.....PROSECUTOR

VS.

KEVIN MUGO GACHUHI..... ACCUSED

SENTENCE

1. Kevin Mugo Gachuhi (the “Accused Person”) was originally charged with murder of Stephen Maina Irungu contrary to section 203 as read together with section 204 of the Penal Code. He was first arraigned before the Judge at the High Court in Murang’a on 25/09/2015. He pleaded not guilty to the charge. The file was later transferred to this Court for hearing and disposal.

2. Before hearing took off, the parties entered into a Plea Agreement. It was accepted and recorded by the Court on 04/10/2017. By its terms, the Accused Person pleaded guilty to the charge of manslaughter contrary to section 202 as read 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.

3. The agreed facts of the case lay out the circumstances and context in which the offence was committed. They are as follows:

[O]n the 28th day of July 2015, at around 6:30pm, the Accused, Kevin Mugo and the Deceased, Stephen Maina who was staying in the same plot in Maraba estate on the outskirts of Thika Town had a quarrel over a debt of Kshs. 10/- which resulted to a physical fight (confrontation). In the process, the Deceased was stabbed by the Accused with a kitchen knife on the left side of the ribs and succumbed to injuries on his way to the hospital. Meanwhile, the Accused presented himself to Maraba Administration Police Post where he was arrested and later charged with the offence of murder.

4. The Prosecutor, Ms. Maari informed the Court that the Accused Person was a first offender. She left it to the Court to fashion an appropriate sentence.

5. The Victim’s father, Thomas Irungu Mwangi elected to address the Court. However, his anguish was more about the failure by the family of the Accused Person to keep up on the agreed compensation as culturally agreed. The Accused Person is an orphan and was brought up by his aunt. She appeared in Court at the insistence of the Victim’s father, to explain their seeming reluctance to go through with the terms agreed at home. Her name is Alice Wanjiku. She explained that she is no longer in gainful employment due to ill health but that as a family they are committed to keeping the terms of agreement as agreed by the elders. She reminded Mr. Irungu that culturally, compensation for such a tragic event is analogized to dowry payments: the aim is to start and sustain a relationship between the parties by paying “goats” in small amounts whenever the party that is paying is able to raise “respectable” amount to go “visiting” the recipients.

6. Ms. Wanjiku pleaded with the Court to consider non-custodial sentence for the Accused Person. She said that since he was released from custody, she has noticed a huge difference. The Accused Person has, in her estimation, already reformed. She prayed for leniency from the Court.

7. So did the Accused Person’s lawyer, Mr. Njuguna. He informed the Court that the Accused Person is an orphan. He is remorseful. He is a first offender. He was also very young when he committed the offence. He is helping to take care of his siblings who are much younger than him.

8. The Accused Person also addressed the Court. He pleaded for non-custodial sentence. He told the Court that he would really like to be in gainful employment so that he can provide for his brothers – and also be there for them. He said that he regrets the action he took on that fateful evening. He told the Court that he is now married; and that family life has changed him – as his two-year stay in custody did. It gave him an opportunity to think through life. He promised the Court that he is now a changed man and will not take for granted a second chance given to him by the Court. He pleaded for a non-custodial sentence.

9. The pre-sentence report filed by the Probation Officer is quite favourable. It describes the Accused Person as remorseful and one who will

benefit from non-custodial sentence given his youthful age.

10. In considering appropriate sentence, I have taken into account the following factors:

- a. First, the relative youthfulness of the Accused Person. The Accused Person was barely 18 years old when the incident happened.
 - b. Second, the Accused Person has demonstrated genuine remorse for his actions.
 - c. Third, the Accused Person entered into plea agreement negotiations as soon as he could and pleaded guilty at the earliest opportunity.
 - d. Fourth, the circumstances in which the homicide happened indicate that the Accused Person had not pre-planned his use of violence. There was no use of gratuitous violence; and no utilization of particularly cruel or depraved means to commit a crime.
 - e. Fifth, the Accused Person is a first offender.
 - f. Sixth, the Accused Person (and his family) has shown a willingness to reconcile with the family of the victim and is willing to take steps to restore the breached relationship.
 - g. Seventh, the Accused Person is recently married and has a long life ahead of him.
 - h. Eighth, the Pre-Sentence Report is quite favourable and predicts that the Accused Person will benefit greatly from a non-custodial sentence which could lead to his complete rehabilitation.
 - i. Ninth, the Accused Person spent two years in custody during which, by his rendering, he reflected on his actions.
 - k. There are no aggravating circumstances.
- l. Looking at all these factors, I am persuaded that this is an appropriate case of a non-custodial sentence. **In the circumstances, I sentence the Accused Person to serve a Probation Sentence for a period of two years under the supervision and direction of the Probation Office, Thika Sub-County.**

Dated and Delivered at Kiambu this 8th Day of March, 2018.

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JOEL NGUGI

JUDGE