



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO 27 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

JULIUS MWANGI WAMBUI.....ACCUSED

SENTENCE

1. The convict **JULIUS MWANGI WAMBUI** was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** the particulars of which were that on the 2nd day of June, 2017 at Gachui Estate in Dagoretti within Nairobi County murdered **ERICK NDUNGI WANJIKU**.

2. He pleaded not guilty to the said charge and by a Plea Bargain Agreement dated 18/1/2018 and filed on the same date and accepted and recorded in court on 23/1/2018 the said charges and reduced to a lesser charge of manslaughter contrary to **Section 205** of the **Penal Code** to which the convict pleaded guilty and was duly convicted on his own plea of guilt.

3. The fact which constituted the offence to which the accused pleaded guilty were that on 02/6/2017, one **DAVID GITHINJI KINYANJUI** found the accused person quarrelling with one **ERICK NDUNGI WANJIKU** (the deceased) at Gachui Shopping Centre. He then tried to separate them as the accused wanted to strike the deceased and while attempting to separate them, the accused stabbed him with a penknife which he was holding in his fist. When **DAVID GITHINJI KINYANJUI** realized that he had been stabbed, he informed his friends who were by then around and who advised him to proceed to the hospital for treatment.

4. **DAVID GITHINJI KINYANJUI** then proceeded to the Nice Hospital leaving the accused person chasing the deceased having stabbed the deceased with the same knife on the neck and lower abdomen. The deceased ran towards his grandmother homestead but fell down before reaching there. He was rushed to Kikuyu Mission Hospital from where he succumbed to the fatal injuries while undergoing treatment.

5. In support of these facts the prosecution submitted in evidence post mortem report by **DR. PETER NDEGWA** confirming that the deceased died as a result of exsanguinations due to multiple penetrating sharp force trauma consistent with assessment. It was further confirmed that the conviction was fit to stand trial by **DR. SHAKO**.

6. In mitigation, Mr. Ratemo Oira Advocate submitted that the convict was remorseful and regretted the death of the deceased. It was submitted that the offence was committed as a result of having been in a drinking spree and should therefore be given a lesser sentence. On behalf of the prosecution it was submitted the convict was a first offender.

7. In compliance with the Sentencing Policy Guidelines, the court ordered for a pre-sentencing report which was filed on 5/3/2018 wherein it was stated that the convict was a son of a single mother **ANNE WAMBUI MWANGI** who died in the year 2000 and that efforts to interview the convict's maternal relatives were unfruitful based on conflicting information given by the same. At the time of the commission of the offence the convict was working as a *matatu* conductor on Route number 111 plying Nairobi-Ngong and was married with two children. However, their marriage had broken down at the time of the offence.

8. The convict was unknown to the Area Chief of Gichui where he was living. The offender's account of the facts leading to the commission of the offence were that the deceased was pestering him on a debt of Kshs.200/= which he owed him and that a fight ensued therefore leading to the death of the same.

9. On the Victim Impact Statement it was stated that the deceased was the only son of his late mother who died while he was still young leaving him under the care and custody of his maternal grandmother together with his sister. At the time of his arrest he was single with no child but was caring for his elderly and sick grandmother. It was stated that the accused was a violent person who had fallen out with the deceased over a debt owed and had threatened to stab the deceased and had therefore planned and succeeded in murdering the deceased.

10. It was therefore concluded that in the same report that the convict was a violent person who had threatened to harm the deceased and their effort to stop him failed as he stabbed those who tried to stop him and chased the deceased. It was stated that the convict had not established fixed abode and was therefore not suitable for non-custodial sentence.

11. The objectives of sentencing upon conviction is to meet either of the following:-

1) Retribution: to punish the offender for his/her criminal conduct in a just manner.

2) Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

3) Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law abiding person.

4) Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.

5) Community protection: to protect the community by incapacitating the offender.

6) Denunciation: to communicate the community's condemnation of the criminal conduct.

12. In this matter the action of the convict was uncalled for as even if the deceased was pestering him over a debt, there were suitable means of settling the dispute rather than stabbing the deceased. I have noted that in addition to the deceased, the convict also stabbed the person who had intervened and tried to separate the accused and the deceased. He is therefore a danger to society who should be kept away from the community for its own protection and to be deterred from committing similar offences.

13. I have taken into account the circumstances under which the offence was committed, the Victim Impact Statement and the objectives to be served in sentencing the convict here and has come to the conclusion that a custodial sentence would be very appropriate herein. I have taken into account the age of the convict and the current status of the grandmother of the deceased and has come to a conclusion that

an imprisonment term of fifteen (15) years would be an appropriate sentence herein which I hereby issue and it is so ordered.

14. The convict has right of appeal on sentence having been convicted on his own plea of guilty as a result of a Plea Agreement.

DATED, DELIVERED and SIGNED at Nairobi this 11th day of April 2018.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Meroka for the State

Mr. Ratemo for the accused

Accused present

Court clerk Paul