



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL CASE NO.22 OF 2017

(CONSOLIDATED WITH CRIMINAL CASE NO 23 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

CHRISTOPHER KIPLANGAT MISIK.....1ST ACCUSED

VINCENT KIPKEMOI LANGAT.....2ND ACCUSED

SENTENCE

1. The two accused persons in this matter are father and son. They were charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence were that on the 2nd day of September 2017 at Tukuito village within Waldai Location Belgut Sub-county within Kericho County, they murdered Alfonse Kipngetich Langat.
2. The accused pleaded not guilty to the offence and the matter was scheduled for trial. However, pursuant to a plea agreement between the accused and the state, the charge against them was reduced to manslaughter contrary to section 202 as read with section 205 of the Penal Code.
3. The facts of the case as presented by Learned Senior Principal Prosecution Counsel, Mr. Ayodo, are that the 1st accused, the father of the deceased, was living in the same compound as the deceased. On 2nd September 2017, at around 8.00 p.m the accused and his wife and children were having supper together with the deceased. The deceased refused to eat and a quarrel started between the deceased and the 1st accused. The deceased was quarrelling with his father, asking him why he had given the deceased's sister, Cheptoo, a piece of land instead of adding the deceased another portion. The accused had previously given the deceased two acres of land.
4. Before the accused could respond, the deceased picked up a wooden bench that he was sitting on and hit the 1st accused on the face. He further threatened to kill the 1st accused if he did not add him another portion of land.
5. The accused sustained injuries on the face and mouth and started bleeding. The wife of the accused stopped the deceased from further attacking the accused person, but the deceased picked an axe that was placed at the corner of the house and threatened to cut the 1st accused. The 2nd accused arrived just in time and managed to disarm the deceased of the axe.
6. The 1st accused escaped from where the deceased was and rushed to his bedroom and locked himself inside. The deceased followed the 1st accused, picked up the bench he had earlier used to assault the 1st accused, used it to break the bedroom door and went in and started to assault the 1st accused. By this time the 1st accused's wife and daughter were screaming for help.
7. The 2nd accused, who had gone to hide the axe, rushed back to the scene where his father was being attacked in his room. He picked up the remaining part of the bench that was in the sitting room and used it to hit the deceased on his legs. The 1st accused reached for a panga that was under the bed and used it to cut the deceased on the head and neck, as a result of which the deceased bled profusely. The 1st and 2nd accused carried him outside in a bid to offer first aid but they discovered he had bled to death. The accused then went to Sosiot Police Station to report the incident and they were arrested.
8. The area Chief and police were notified about the death of the deceased, and police officers from Sosiot Police Station arrived at the scene and started conducting investigations.

9. The body was taken to Siloam Hospital Mortuary and a post mortem was conducted on 5th September 2017 by Dr. Wesley Rotich. According to the post mortem report, the cause of death was a severe head injury due to trauma to the head by a sharp object. The post mortem report was produced as exhibit 1.

10. The accused persons were examined by a psychiatrist and found fit to stand trial. They were charged with the current offence which has been reduced to manslaughter contrary to section 202 as read with section 205 of the Penal Code pursuant to the plea bargaining agreement.

11. The accused persons admitted the correctness of the facts and were convicted on their own plea of guilty. The state indicated that the accused were both first offenders.

12. Mr. Koko for the 1st accused stated in mitigation that the facts read to the court and the evidence of witnesses showed that the 1st accused was not the aggressor. It was the deceased who was the aggressor. He was aggrieved that the 1st accused had given his daughter a parcel of land. The 1st accused was trying to avoid discrimination on the basis of sex. By giving his daughter land, and by upholding the Constitution, he was attacked by one of his sons who was greedy and did not want to share with his siblings what belonged to his father.

13. The 1st accused had tried to avoid retaliation and had ran away to avoid being attacked. He had ran to his bedroom where the deceased had followed him and threatened to cut him and kill him. Mr. Koko urged the court to discharge the 1st accused, noting that he was remorseful and had been placed in a situation where it was either his life or that of the deceased, who was the aggressor.

14. Ms. Kitur for the 2nd accused stated in mitigation that from the facts read in court, it was clear that the 2nd accused had no intention to commit the offence with which he is charged. He was not present when the deceased started the attack on their father. He was called by one of his sisters to come and save the 1st accused who was being attacked by the deceased. He had disarmed the deceased of the axe he was trying to attack the 1st accused with. The 2nd accused was remorseful and regretted the commission of the offence. Ms. Kitur urged the court to give the 2nd accused a non-custodial sentence or sentence him to the period he has spent in custody.

15. I have considered the facts of this case and the mitigation offered on behalf of the father and son whose hands were unfortunately the vehicle through which the deceased lost his life. Indeed, from the facts of the case, it was the action of the father in self defence that led to the loss of the life of the deceased. There is no doubt that the deceased was the aggressor. He took the reprehensible decision to physically attack his father, the 1st accused, because he had given his daughter, a sister of the deceased, a piece of land.

16. To attack one's father physically at all is bad enough. To assault him violently because he tried to treat all his children equally is reprehensible, to attack him once with a bench, threaten him with an axe, follow him into his bedroom when he ran away is beyond comprehension. The evidence shows that the 1st accused was not a violent person. He tried in every way to avoid confrontation with his son, to the extent of running away and trying to seek safety in his bedroom. His action that led to the death of the deceased was clearly the act of a person pushed into a corner.

17. It is regrettable that a human life, the life of his son and the brother of the 2nd accused was lost. However, it is clear that the deceased provoked a situation in which someone was quite likely to die. As Mr. Koko submitted in mitigation, it was either the life of the deceased, or of his father.

18. In the circumstances of this case, I find that the 1st accused was left with no option by the deceased but to defend himself. That he chose to do so in a manner that caused the death of his son is regrettable, and is something that will doubtless haunt him for the rest of his life. He has spent the period since his arrest in custody. That in my view is sufficient punishment in the circumstances of this case.

19. With respect to the 2nd accused, the facts read to the court indicated that he hit the deceased on the legs to stop him from attacking the 1st accused. He had earlier disarmed his brother of an axe, and was returning from hiding it when he found his brother still attacking their father. He did not inflict the fatal blow that led to the death of the deceased. He too, has been in custody for a period of nine months or so.

20. Taking all the facts and circumstances into consideration, and noting the social inquiry report filed by the Probation Office, I hereby sentence both accused persons to the period spent in custody since their arrest. They shall be released forthwith unless otherwise lawfully held.

Dated Delivered and Signed at Kericho this 28th day of June 2018.

MUMBI NGUGI

JUDGE