



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CRIMINAL CASE NUMBER 35 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

JACKSON MAINA WANGUI.....1ST ACCUSED

JOSEPH KIRERO SEPI.....2ND ACCUSED

RULING ON SENTENCE

Jackson Maina Wangui, the 1st accused, and Joseph Kirero Sepi, the 2nd accused, were tried for the murder of contrary to Section 203 as read with Section 204 of the Penal Code. The victim is Kevin Oduor Onyango. The 2nd accused was acquitted at the close of the prosecution case after the court found that he had no case to answer. The 1st accused was placed on his defence. In the judgement delivered by this court on 14th March 2017 this court found that the prosecution had failed to prove the offence of murder against the 1st accused and acquitted him of that offence. The court, however, found the 1st accused guilty of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code and convicted him. Sentencing was deferred to 20th March 2017 to enable the court to receive the previous records of the 1st accused and mitigation.

On 20th March 2017, the prosecution counsel Ms Catherine Mwaniki submitted to the court the previous records of the 1st accused. The record disclosed that the 1st accused did not have previous criminal records. Ms Mwaniki asked the court to treat the 1st accused as a first offender as the record shows.

The 1st accused mitigated through his defence counsel Mr. Bowry who drew this court's attention to the Judiciary's Sentencing Policy Guidelines and urged the court to take these Guidelines into consideration while sentencing the 1st accused. Mr. Bowry also referred the court to the case of **Republic v. Thomas Gilbert Cholmondeley Criminal Case Number 55 of 2006 reported in [2009] eKLR** and urged this court to take into account and adopt the sentencing principles enunciated in that case. Counsel asked this court to consider the circumstances of this case and submitted that in taking the deceased to the fourth floor, the 1st accused intended to rescue him from a hostile crowd and not to harm him and that although the 1st accused was in the habit of carrying his cocked gun around, this was due to a threat he had experienced earlier on and not because the 1st accused intended to harm the deceased. Mr. Bowry beseeched the court to give the healing process a chance.

It was further submitted that the 1st accused is remorseful for the death of the deceased and that he did not

intend that outcome; that although this court discounted the defences of accident and self-defence these defences are relevant as mitigating factors and ought to be treated as such in this sentencing process.

This court was told that the 1st accused is 40 years old; he is married with two children aged 9 years and 4 years; his wife is expecting their third child in September this year; that he looks after his mother and that he suffered financial difficulties after this incident following the closure of the Club. The court was urged to exercise leniency by sentencing the 1st accused to a probation term as this would allow him the chance to redeem himself.

I have considered the mitigation by the 1st accused through. The circumstances of the offence in issue are fresh in my mind and therefore need no repetition.

Sentencing is left to the discretion of the court. Discretion connotes freedom in decision making. That freedom must be exercised judiciously, wisely, with prudence and cautious discernment. That freedom is not exercised in a vacuum. Certain factors must be taken into account. These factors include fairness in considering the circumstances under which the offence was committed, sentencing guiding principles and the rules as well as the law.

Manslaughter is a felony created by Section 202 of the Penal Code. The penalty for manslaughter is provided under Section 205 of the Penal Code. These two provisions of the law are worded respectively as follows:

“Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter.”

And,

“Any person who commits the felony of manslaughter is liable to imprisonment for life.”

Judging is a difficult job that should be taken with the seriousness it deserves. It involves applying the judge’s mind to the law and facts to decide a case. It involves being alive to the fact that one is dealing with human beings who have rights under the law. In a case involving death, there is loss of life. The family of the victim is left hurting especially because they are aware that nothing can be done to undo the act and bring their kin back to life. It is a painful experience for them. On the other hand is the accused person who has to live with that dark blot all his remaining days on earth. There is nothing he can do to undo that act either. He/she has family and in some cases he/she may be the only person who is in a position to provide for his family. These are some of the factors a judge must deal with. In that balancing act, each individual judge must make decisions whose outcome may be influenced by certain factors including personal views of the judge on legal, social and moral issues. For most victims, sentencing the accused to serve the stiffest sentence permitted by law serves their purpose; to others healing the wounds and forgiving those found culpable is adequate. One thing remains constant though, that a crime has been committed and the law has been breached resulting in loss of life, as in this case. This action has its consequences and justice is not served, in the eyes of the law, until the culprit is handed the punishment prescribed by that law. This is where the court’s discretion comes into play to ensure fairness for all parties involved, though I am aware that it is not easy to satisfy the parties in whichever decision the court makes.

In this sentencing process, I have taken into account the provisions of Section 205 of the Penal Code, the cited authority and the Sentencing Policy Guidelines. I have also taken into account the personal circumstances of the 1st accused and the circumstances surrounding the commission of this offence. In sentencing him I am alive to the requirement that the sentence meted out must be proportionate to the offending behaviour and is in my view merited in regard to the offence committed. I have compared various authorities in respect of the offence of manslaughter and I am satisfied that similar offences have attracted similar sentence. I have also observed the principles of equality, uniformity and consistency in this sentencing process. In my considered view after taking into consideration all the factors mentioned above including the time it has taken to conclude this case as well as the principles set out in the cited

authority, and bearing in mind that the penalty of life imprisonment for the offence of manslaughter prescribed under Section 205 of the Penal Code is the upper limit, I hereby sentence the 1st accused Jackson Maina Wangui to five years imprisonment. The law allows him a right of appeal within fourteen (14) days from today's date. Orders shall issue accordingly.

Dated, signed and delivered in open court this 22nd day of March 2017.

S. N. Mutuku

Judge