



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL CASE NO. 22 OF 2015

REPUBLIC.....PROSECUTOR

Versus

DANIEL OKELLO RAPUCH.....ACCUSED

SENTENCING REMARKS AND VERDICT

This has been a length trial where you were indicted with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The brief circumstances which the prosecution set to prove were that on 29/7/2013 at Birika you murdered the deceased Simon Githua. The occurrence of this murder as deduced from the case for the prosecution happened in your house. As stated during the hearing and evidence accepted by this court the deceased had engaged in an illegal love affair with your wife. You pleaded not guilty and prosecution summoned six (6) witnesses to prove your guilt as required by law.

At the close of the prosecution case you were placed on your defence. This court in consideration of the matter on the evidence arrived at a decision that there were extenuating circumstances on culpability and did substitute the offence of murder to that of manslaughter contrary to section 202 as read with section 205 of the Penal Code. That is the offence a verdict of guilty and conviction was entered against you.

The law therefore requires of this court to consider the aspect of punishment. During the sentencing hearings I accept the submissions by the prosecution counsel that the offence in which you were found guilty is a serious offence. Counsel drew this court attention on the nature of penalty prescribed by parliament being that of a maximum of life imprisonment. I also accept the submissions that you have no previous criminal record and therefore this court treats you as a first offender.

The victim impact statement was never obtained but contact with the family to the deceased was made through an interview conducted by Mr. Mwaniki the probation officer which has been included in the pre-sentence report. Their major complains is lack of remorse on your part for occasioning the loss of one of their own. The family contention is that there ought to have been some kind of victim/offender mediation between them and yourself. The pre-sentence report also highlighted your good behaviour and productive life in fending for your family. The community interviewed indicated that prior to this offence you engaged well with the community and have no problem in your readmission on home based rehabilitation. The report further contends to the fact of your unlikely to reoffend and hence not a threat to society.

As to mitigation I accept that presentation made by your counsel Ms Mageto on the circumstances of the offence, your role in supporting the family, your past conduct, present and future prospects of your reforming and rehabilitation not to be a threat to society or the community.

I proceed to sentence you on the basis of the above facts. In our criminal law there is no dispute the

offence of manslaughter contrary to section 205 is a serious offence specified as attracting a maximum penalty of life imprisonment. However I am alive to the fact that it is normally a discretionary sentence that a trial court has to consider all the circumstances in order to impose an appropriate sentence.

In the present case I have taken into account the mitigating factors that you are a family man with children who depend on you. Secondly the extenuating circumstances of the offence where your culpability to the homicide was under provocation and diminished criminal responsibility. Thirdly, according to the prosecution you have no previous criminal record as a result I treat you as a first offender. I also consider that since your indictment on 13/8/2013 you have been in remand custody pending trial of your case. This period is significant as stated under the proviso of section 333 (2) of the Criminal Procedure Code requiring a trial court while punishing an offender to provide for remission computing the final sentence of imprisonment.

Weighing one factor after another I am persuaded not to sentence you to a non-custodial sentence but custodial sentence to enable you undergo rehabilitation within the precincts of a correctional facility. I therefore sentence you to twelve (12) months imprisonment. 14 days right of appeal explained to the Court of Appeal.

Dated, delivered and signed in open court at Kajiado on 19th day of April, 2017.

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R. NYAKUNDI

JUDGE

In the presence of:

Ms. Mageto for accused present

Mr. Akula for Director of Public Prosecutions present

Mr. Mateli Court Assistant

Accused present