



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIAMBU

CRIM. CASE NO. 11 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

JAMES MWICIGI GITHINJI.....ACCUSED

SENTENCE

1. The Accused Person herein, James Mwicigi Githinji (“Accused Person”) was charged with murder contrary to section 203 of the Penal Code as read together with section 204 of the Penal Code. He was accused of unlawfully killing James Mutua Mbugua on 31/12/2014 at Gamba village in Lari within Kiambu County.

2. The Accused Person denied the charges and a fully-fledged trial ensued. At its conclusion, I found the Accused Person guilty of the lesser but cognate offence of manslaughter contrary to Section 202 as read together with Section 205 of the Penal Code. I then set the case for sentence hearing and invited the victim’s family to attend and make any representations if they so wished. I also requested the Prosecutor to file any Victim Impact Statements before the date for the Sentencing hearing.

3. On 19/06/2016, two members of the Victim’s family addressed me on the impact of the offence on them and their views on the appropriate sentence. Mrs. Florence Mukami is the widow of the Deceased. She stated that she was left to take care of their three children alone. Since she is unemployed, the children could not advance their education beyond secondary school when their father was killed. She felt strongly that the only justice in the case would be for the Accused Person to be sent to prison for the rest of his life. In her words, that is the only punishment that will put her heart “to rest.”

4. Mr. Paul Kinyanjui Mutua is an uncle to the Deceased. He was of similar views. He said that the children of the Deceased have really suffered following his death. He asked the Court to give a deterrent sentence and thought that life imprisonment was the appropriate sentence.

5. Ms. Maari submitted that the Accused Person was a first offender. However, he asked the Court to consider that the Accused persisted in his denial that he had stabbed the Deceased throughout the trial. Consequently, the trial took more than a year to conclude. Ms. Maari noted that the Accused Person did not offer to plea bargain to manslaughter despite the evidence. She asked for custodial sentence.

6. On his part, Mr.Thiong’o submitted on behalf of the Accused Person. He submitted that the Accused Person was arrested on 03/01/2015 and that he has been in custody since then since he could not raise bail terms. He submitted that the circumstances of the case are clear that the Accused Person did not intend to cause grievous harm or kill the Deceased.

7. Mr. Thiong’o further submitted that the Accused Person is extremely remorseful for having caused the

death of the Deceased. He seeks the forgiveness of the family of the Deceased. He is willing to engage in reconciliation with the relatives.

8. Mr. Thiongo also submitted that the Accused Person was a law-abiding citizen who does not have any other criminal record. He was also the support for his parents financially. Mr. Thiongo proposed that the Court follows the recommendations of the Probation Report and sentence the Accused Person to the time served and then order for a non-custodial sentence.

9. I requested for a Probation Report which was filed in Court on 09/05/2017 by Mr. Kepha Ong'era. The Report paints the picture of a remorseful young man who promises not to re-offend. The Accused Person and his family pray for a lenient sentence. The Probation Report concludes that the Accused Person was probably a victim of peer pressure and recommends a probation sentence.

10. I have carefully considered all the relevant factors with a bearing on the suitable sentence in this case. Of particular importance to me are the following factors:

- a. The relative youth of the Accused Person – and in particular, the fact that the Accused Person has a whole productive life ahead of him.
- b. The circumstances in which the offence was conducted. In particular, I have considered that though a life was lost, it was not a result of a blatantly violent conduct on the part of the Accused Person. Indeed, my findings were that it was the Deceased who attacked the Accused Person and the Accused Person responded with unjustifiable deadly force.
- c. The Accused Person is remorseful
- d. The Accused Person is a first offender.
- e. The family of the Deceased is categorical that a custodial sentence should be handed down. Indeed, they recommend the maximum sentence of life imprisonment.
- f. The Accused Person has been in custody two years having been arraigned on 03/01/2015 and having been unable to afford bail.

My considered conclusion is that this is **not** an appropriate case for a non-custodial sentence. I have considered that though remorseful, the Accused Person did not take responsibility for his actions at the earliest instance. His remorse is, therefore, to be taken with a pinch of salt. The offence was also committed with a deadly weapon – a knife. I have also taken into consideration the very serious financial and psychological effects the death will have on the Deceased's family – including his wife, children and his siblings as narrated by the two family members who addressed the Court on sentencing.

11. Finally, as I pointed out in the Judgment, the Accused Person acted in conscious disregard of human life by leaving the Deceased bleeding and fleeing the scene without seeking help for him even though he knew he had left him incapacitated and probably unconscious.

12. In the circumstances of this case as outlined above, after weighing all the mitigating and aggravating circumstances and after taking into consideration the views of the victim's family and the prosecution and the mitigation by the Accused Person, I will proceed to sentence the Accused Person to five (5) years imprisonment. The time the Accused Person has been in custody during the pendency of this case shall be taken into consideration in computing the time he shall serve in prison.

13. Orders accordingly.

Dated and delivered at Kiambu this 22nd Day of June, 2017.

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JOEL NGUGI

JUDGE