



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL CASE NO. 16 OF 2016
REPUBLIC.....PROSECUTOR
versus
PETER LEKUPE.....ACCUSED

RULING ON SENTENCE

1. **PETER LEKUPE**, the accused, was originally charged with the offence of murder. After entering to plea bargain with the Director of Public Prosecution (DPP) he pleaded guilty to lesser **charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code Cap 63.**

2. The facts of the case to which the accused pleaded guilty are:-

“That on the night of 21st June 2016 at around 2000 hrs LEMURON LEKOBÉ the deceased and PETER LEKUPE the accused, who were going home from a drinking spree at Mtarō changaa Dens within Maralal township, this was confirmed by two witnesses who saw them walking while drunk. On the way the two developed a quarrel over unpaid dowry, by the deceased, the deceased then hit the accused and fight ensued between them, the accused responded and hit the deceased on the head with a rungu severally and left him lying down, the following day the deceased was found dead. The post mortem was done on 27/6/16 where the doctor concluded the deceased died of cardiopulmonary arrest secondary to severe head injuries.”

3. The accused at the time of his conviction on the charge of manslaughter was a first time offender. The assistant chief of Shabaa sub-location Maralal location by Samburu County his letter dated 9th November 2016 stated that he had known the accused for 20 years and in that period he had known the accused to be obedient, respectful and trustworthy person.

4. The probation report dated 8th November 2016 stated that the accused was 35 years old, married with four children. He practiced livestock keeping to support his family.

5. The court was informed that the accused family met the deceased’s family and in accordance with the Samburu culture it was agreed that the accused family would pay Kshs.150,000 as compensation for the death of the deceased. An agreement of those two families was presented to court evidencing the same.

COURT’S DETERMINATION

6. The learned counsel for the accused cited to the court cases where parties had entered into reconciliation with deceased family and as consequence of that and in keeping with provisions of the

Article 159 of the constitution, which encourages alternative dispute resolution, DPP entered a *nolle prosequi* in respect to the charges of murder. Those cited cases were of no assistance to this court because in this case the accused pleaded guilty and was convicted of the offence of manslaughter.

7. The court in considering the accused sentence will bear in mind the holding of the case **PUBLIC PROSECUTOR V RAPRAP [2011] VUSC 89** where His Lordship Spear J. said:-

This sentence must hold you fully accountable for what you have done; it must denounce your conduct and promote in you a sense of responsibility for your activities

Sentencing is essentially an exercise of discretion of the trial court.

8. The facts re-produced above show that there was a quarrel between the accused and the deceased. There was no one else present. Following that quarrel it is only the accused who remained alive. The facts, therefore, of the case are based on what the accused stated.

9. The matters that the court will consider to the credit of the accused is that until the fateful date when the deceased died, the accused was a man of good character. The accused was remorseful of having killed the deceased who was a relative.

10. There is indeed no sentence that ever can reflect the value of life. It is however clear to this court from facts available that the accused did not intend to kill the deceased. The court will however have to balance the public disapproval of taking another person's life and the lack of accused intend to kill the deceased.

11. It is for that reason, in accordance to **section 15** of the Criminal Procedure Code, **that this court sentences PETER LEKUPE to suspended sentence of 1 ½ years.**

It is so ordered.

DATED AND DELIVERED AT NANYUKI THIS 20TH DAY OF JUNE 2017.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant – Njue/Mariastella

Accused: Peter Lekupe

For Accused

For the State:

COURT

Ruling on sentence delivered in open court.

MARY KASANGO

JUDGE