



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO. 14 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

CHARLES KIBE.....ACCUSED

SENTENCE

1. The accused person, Charles Kibe (“Accused Person”), was originally charged with murder contrary to section 203 as read together with section 204 of the Penal Code. The particulars in the charge sheet were that the Accused Person murdered Grace Nduta Mwaura on 25th day of January, 2017 at Kahawa Sukari in Ruiru Sub-County within Kiambu County.
2. The Accused pleaded not guilty to the charges. Later, on 21/06/2017, the Prosecution and the Defence appeared before me with a Plea agreement. On this day, the Accused pleaded guilty subject to the Plea Agreement. The Plea Agreement reduced the offence charged from murder to manslaughter. The Court approved the Plea Agreement, and, after duly complying with sections 137D and 137H of the Criminal Procedure Code, convicted the Accused on his own plea of guilty on the charge of manslaughter.
3. The agreed facts as stated in the Plea Agreement of the case. I will reproduce them here:

On the 25th day of January, 2017 at around 11:30am, the Accused and his sister, Grace Nduta Mwaura, the Deceased, were left at their home alone when their parents left for work. The Accused then left upstairs for the Dining Room where he came across cereals prepared in a bowl with milk and he ate them and went back upstairs. Later the Accused’s sister (Deceased) angrily called him saying that he had eaten [her] cereals which she had prepared for her breakfast. The Accused apologized and told her that since there was some [cereals] remaining, she could prepare it and take for her breakfast.

[The Deceased], however, did not take the apologies from the Accused and instead [she] went ahead and started [insulting] the Accused using vulgar language like “wee end utombe shosho” “tomba mamako” and the Accused then retaliated calling her “Mbwa wewe wacha utoto!” and the two went on abusing each other for a while until the Deceased ran into the Kitchen and took a knife [with] which she threatened to stab the Accused and as she was struggling to stab him, he blocked the knife with his left hand and in the process he was cut with the said knife.

When the Accused realized that the Deceased was seriously intending to stab him, he also ran to the kitchen and took a kitchen knife to scare her away by threatening that he would stab her if she continued with the confrontation but the Deceased who had already charged could not hear any plea from the Accused. She continued with the confrontation and the Accused unintentionally while trying to defend himself stabbed on the right side of the neck where she fell down and started bleeding profusely.

Later, the Accused went into confusion and panic mode and started dismembering the body and disposing off the parts to conceal all that had happened from his parents. Two days later, when he realized that the disappearance of her sister had been reported to the Police and the Police were investigating, he knew the unfortunate incident would come out and he decided to stab himself. He was later arrested and charged [with] the offence of murder.

4. The Court invited the family of the victim to make a Victim Impact Statement and address the Court if they were so minded. They declined to address but they filed a Victim Impact Statement recorded by Elizaphan Mwaura Kibe who is a father to both the Deceased and the Accused Person. The Statement expressed anguish at not only losing the Deceased but at the possibility of losing the Accused Person to prison. The Statement explains that the parents of the Deceased and Accused Person have been severely affected psychologically at the prospect that in addition to losing their Deceased daughter, their only son might be sentenced to imprisonment.
5. The Statement also explains that the Deceased’s and Accused Person’s younger sister, a Form Three Student, has also been severely affected as is the entire extended family.
6. The Victim’s family pleaded with the Court to consider “the fact that [they are] both the Victim’s family and the Accused’s family and

that awarding a life sentence to the Accused will have a serious negative effect to their lives as parents of both the Deceased and the Accused as they will lose both of them.”

7. Hence, the victim’s family is unanimous in requesting for a non-custodial sentence. Mr. Mwangi, the Victim’s family’s Counsel, submitted as much. He informed the Court that the family strongly supported imposition of a non-custodial sentence. He submitted that imposition of a substantial custodial sentence will bring more anguish to the family which is already badly affected by what happened. Lastly, Mr. Mwangi informed the Court that the Victim’s family had had meetings with the Accused Person in which the Accused Person sought forgiveness for what happened. Mr. Mwangi told the Court that the family had resolved to forgive the Accused Person and they look forward to moving together towards healing.

8. The Accused Person also addressed the Court. He expressed remorse for what happened and for his role in it. He stated that he had asked the Lord and his family for forgiveness. He recalled that he deeply loved his sister and that they had always lived cordially together and that this was a most unfortunate flare up of a dispute. He implored the Court to look upon him with leniency and mercy as he has learnt much from this encounter. In particular, he has learnt to become a better person; and to walk away from disputes rather than let them escalate. He also addressed his post-offence conduct of dismembering the body and disposing body parts. He explained that he did not want to get caught as he was trying to protect his “reputation” hence the elaborate scheme to avoid being caught.

9. On the Accused Person’s behalf, Mr. Farrah – his Counsel -- informed the Court that the Accused Person is a young man, 24 years old who just graduated with a Bachelor of Commerce degree from the Jomo Kenyatta University of Agriculture and Technology (JKUAT). He is the first born in a family of three in which the Deceased was the second born. He has always been of good conduct and has never even been reported to the Police let alone be convicted of any offence.

10. Mr. Farrah asked the Court to consider that the act of the Accused Person that led to the death of the Deceased was not intentional or premeditated. Mr. Farrah submitted that the Accused Person is deeply remorseful for what happened. During the six months he has been in custody, Mr. Farrah informed the Court, the Accused Person has taken his time to reflect and seek forgiveness – both from his family and from God.

11. Mr. Farrah requested for a non-custodial sentence. He submitted that the Accused Person deserved a second chance in life and a non-custodial sentence will give him that. A non-custodial sentence, Mr. Farrah submitted, will give an opportunity to the Accused and his family to start the healing process. It will also give the Accused Person a chance to be a big brother to the little sister who badly needs support at this time. Mr. Farrah noted that the Pre-Sentence Report requested by the Court was favourable and sought to associate himself with it.

12. Ms. Maari, for the Prosecution, informed the Court that the Accused Person is a first offender. She later filed the records to demonstrate that. She reiterated that the ODPP considered plea bargaining in this case because of the very difficult position the family of the Victim – especially the parents – would have been put into if the case went to trial. She noted that by pleading guilty, the Accused Person had obviated a very difficult situation. She also supported a non-custodial sentence.

13. The Pre-Sentence Report paints a picture of a young man with relatively good antecedents: a humble and hard-working young man who was in good standing with in the society. He has not, in the past, been associated with any deviant behaviour. The Report concludes that the offender needs guidance and counselling services on the effect of the offence to him and his family and recommends a probation sentence as appropriate for rehabilitation and integration in the community.

14. Sentencing is an individualized process where I am required to consider all the mitigating and aggravating circumstances as applied to the specific circumstances of the case in order to fashion an appropriate sentence that is fit to the offence and circumstances. I have considered the following four mitigating factors.

15. *First*, the offender pleaded guilty in a timely manner and spared the family the stress of testifying in a case where the Victim would be the daughter and the Accused Person the son. Indeed, the Accused Person pleaded guilty – before even the case was set for hearing. As early as the time of taking plea, the Accused Person’s Counsel had indicated to the Court that his client was interested in a plea agreement with the State

16. *Second*, the Accused Person is a first offender. By all accounts he was a young man of good character who was liked and respected in the community.

17. *Third*, the Accused Person expressed remorse. He has sought forgiveness from his family. He suffered great guilt and anxiety as a result of his actions and even attempted suicide. His actions that led to the death of the Deceased were not blatantly or unwarrantedly violent. It is also noteworthy that the Accused Person took full responsibility and addressed his family directly in Court. I have no doubt that the Accused Person’s comments are sincere, and that he is truly remorseful.

18. *Fourth*, I have also considered the views of the Victim’s family as mitigating factor in this case: their view that a substantial prison sentence will add to their anguish and trauma.

19. These mitigating factors must be balanced to arrive at an appropriate sentence. There is one glaring aggravating factor that must be considered. There are certain circumstances when egregious post-offence conduct can be a relevant factor in determining proportionate sentence. Such is the case, as here, where the Accused Person goes to great length to hide his crime. In this case, it is not just the elaborate scheme by the Accused Person to conceal his crime – but is the fact that his chosen means of doing so bears the hallmark of a worryingly atavistic scheme: scrubbing the floor to remove all traces of blood; dismembering of the body; and disposing off the various body parts in different locations. The aim was obviously to conceal the crime committed – but the manner it was done invites outrage and opprobrium.

20. Even while accepting that the Accused Person committed an initial mistake in unnecessarily using deadly force when walking away from the argument would have achieved the objective, what is more worrying is the apparent inability of the Accused Person to stop himself from compounding his mistakes. The Accused Person could have stopped at the stabbing. At worst, he could have panicked and taken off. Instead, he embarked on a process to conceal what had happened. As the Accused was madly scrubbing off the blood from the kitchen floor, a thought should have told him to stop and do the right thing. It did not. As the Accused Person was dismembering the body in readiness for disposal, a saner thought should have checked in. It did not. As the Accused began disposing off the body on the second and third days, a streak of conscience should have registered itself. It did not.

21. In this regard, even accepting the remorse of the Accused Person and equally accepting that the killing was un-intentional and in the exercise of imperfect self-defence, what the Accused Person proceeded to do after the homicide is positively ghastly and gruesome: On realizing that the Deceased had breathed her last, the Accused Person proceeded to carry her body into hiding, dismember it and begin a process of disposing of it in various parts of the neighbourhood in order to conceal his crime.

22. This case is both tragic and troublesome. It is tragic because any sentence against the Accused Person affects both the Accused Person and the family of the Victim since the Victim and the Offender share the same nuclear family and that family is categorical that a custodial sentence will impact them negatively. It is also troublesome because I believe this is one of the circumstances where there is a need for denunciation or deterrence given the circumstances of the case. Indeed, I believe that the circumstances are such that incarceration is the only suitable way of expressing society's condemnation of the Accused Person's conduct or deter similar conduct in the future.

23. Consequently, in my view, a fit sentence that properly balances the mitigating circumstances with the aggravating circumstances is a sentence of three years imprisonment. Accordingly, I sentence the Accused Person to three years imprisonment. Since the Accused Person has been in custody since his date of arrest, the term of imprisonment shall be computed starting on the day the Accused Person was first presented to this Court to take plea that is, on 15/02/2017.

24. Orders accordingly.

Dated and delivered at Kiambu this 27th day of July, 2017.

.....

JOEL NGUGI

JUDGE