



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL CASE NO. 39 OF 2015

REPUBLICPROSECUTOR

VERSUS

HONSTER KISANYA EDAGWA.....ACCUSED

REMARKS AND VERDICT

Honster Edagwa you were initially charged with the offence of murder contrary to section 203 which later on consideration by this court was substituted with that of manslaughter contrary to section 202 as read with section 205 of the Penal Code.

The deceased Paul Edagwa was your own brother born and brought up by your father who has given the victim impact statement. The emotional statement depicts the psychological trauma the death has caused the entire family. According to your father there will be no room for mediation between you and themselves. This is as a result of them considering your act as heinous and which they are not ready to forgive. In your father's statement in the event you secure your freedom, you will meet the same punishment of death like your bother Paul because the family is still traumatized.

This court has also taken into account the mitigation by the defence counsel Mr. Chege. The submissions by Mr. Chege that you regret the offence has been dislodged by the statement made by your own father. What that means no efforts from your side to make attempts to reconcile with your family or seek forgiveness. I also note that you are a first offender as from the submissions by Mr. Akula for state. I have also perused the pre-sentence report and the contents as captured by the probation officer.

This case though reduced to manslaughter still remains to be one of the serious offences in our penal code. The legislature presented a maximum sentence of life imprisonment in the event of a conviction. However the courts are left with some level of discretion to impose a term of imprisonment in place of life imprisonment depending on specific circumstances of each case. In this case the right to life of your brother is fundamental and protected by our constitution. He therefore deserved to live normally like any other citizens without premature death occasioned by unlawful act by his fellow sibling.

As expressed by your father in his impact statement his untimely death has left a gap in their lives including breakdown of family relationship. There is no evidence to the effect that you were not in a fit mental status when you committed this unlawful and dangerous act against your own brother. This court was not privy of any evidence suggesting of heavy alcohol consumption or drugs which could have impaired your judgement on the material day.

The defence counsel Mr. Chege submitted that you regret the offence. However an appraisal of the pre-sentence report and the victim impact statement from your own father shows that you still live in self-defence. It further shows no contrition or that the death of your brother has moved you in anyway. The

submissions on mitigation by your counsel Mr. Chege to me are nothing out of the ordinary. This being a crime committed within the family set up could have enlisted a mediation between yourself and entire family. That is not the case in these circumstances prevailing up to this stage. This death is bound to remain and have a left thing emotional effect to the family.

While listening to the victim impact statement by your father it reveals deep seated traumatic experience which has serious effect on your own safety in the event an opportunity presents itself. Because of such a situation this court cannot shirt its eyes to such an eventuality of another member of the same family being killed on a revenge mission.

I think and do hold the view that the circumstances of the case call for severe custodial sentence. This to me will achieve the following:

To deter and refrain the victims of this offence in carrying out their revenge mission of retaliating attack against your life. I believe that during your imprisonment period the family would find favour with you to commence a mediation process aimed at rehabilitating you back to the community. Secondly, this death was avoidable save for your unlawful act of causing grievous harm which resulted in death. It is useful to note that the notion penalty is to punish crime with a view to emphasize in reforming and rehabilitating the offender. In passing sentence this court aims at holding you accountable and responsible of your actions. This killing was committed through the use of a lethal weapon which to me was heinous, cruel and senseless to say the least.

All these aggravating factors outweigh any mitigation in your favour. I also take judicial notice that you have been in remand custody slightly over 2½ years. I will factor this period on a discount as i pass sentence for this offence of which you have been found guilty and convicted.

For all these reasons i have come to a decision that you be sentenced to long custodial sentence in prison. I therefore impose a sentence of 40 years imprisonment. The statutory surcharge and prerogative of mercy applies to your case.

14 days right of appeal explained.

Dated, signed and delivered in open court at Kajiado on 23rd August, 2017

.....

R. NYAKUNDI

JUDGE

In the presence of:

Mr. Chege for Mr. Wakla for the accused person

Mr. Akula for Director of Public Prosecutions

Mateli Court Assistant

Accused present