



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL CASE NO. 41 OF 2014

REPUBLIC..... PROSECUTOR

VERSUS

1. IP VERONICAH GITAHU1ST ACCUSED

2. PC ISSA MZEE 2ND ACCUSED

15th February, 2016

M. Muya – Judge

Mr Muteti counsel for the prosecution

Mr Magolo counsel for the defence

SENTENCING NOTES

The two Accused persons are charged with the offence of manslaughter contrary to section 202 of the penal code. This offence under Section 205 of the penal code carries a maximum sentence of life imprisonment.

The accused persons have been treated as first offenders. This offence was committed while in the line of their duties. It is noted that the two accused persons have put in a considerable period of their years in the police service, both have families which depend on them. The Court has been told that they are remorseful and sorry for the events of 22nd August, 2014 and that for the two years that this case has been ongoing it has given them complete rehabilitation which is one of the main principles for sentencing.

It is further submitted in mitigation that if the two accused persons are sentenced to jail terms the two families would be rendered destitute.

The first accused is said to be diabetic and therefore not fit for prison conditions. I have perused the victim impact statement filed by the prosecution on behalf of U Z D dated the 11th day of February 2016 and in which she states that the deceased was her only child. That she has been undergoing a lot of agony after the murder of her child.

That she has moved out of her homestead and gone to stay elsewhere.

She expresses fears that if released from custody there will be high risk of being attacked, she therefore asks the court to mete out the maximum sentence for the offence.

Mr Muteti for the prosecution and Mr Ndubi for the family exhorts this court to bear in mind the nature of the offence and its prevalence countrywide. Also to consider the public interest in this case and the fact that the victim was a young girl.

Further to consider the provisions of Section 23 of the Victim protection Act which gives power to the court to order for compensation in the following manner.

“A victim has a right to restitution or of compensation from the offender and the enforcement thereof in accordance with this Act.

(2) Subject to any limitations and conditions set out in this act, the victim has a right to compensation by the offender for:

(a) economic loss occasioned by the offence.

(b) loss of or damages to property.

(c) loss of user over the property.

(d) Personal injury

(e) costs of any medical or psychological treatment and

(f) costs of necessary transportation and accommodation suffered or incurred as result of an offence.

(3) A victim has the right to restitution of any property or right to property of which the victim is deprived as a result of an offence in respect of which the victim is entitled to the rights and remedies specified in this Act”.

It is noted that the victim protection Act is in its nascent state or form. Whereas it provides for victim compensation by an offender for good reason, it also established a victim protection trust fund under Section 27 of the Act.

Section 28 of the Act provides for sources of the funds to consist of,

(a) Monies appropriated by the National assembly

(b) Monies received by the fund as grants, donations or gifts from non- government or non- public sources.

(c) The victim surcharge levy.

(d) Income generated by investments made by the board of Trustees

(e) Interests accruing from the fund.

I have heard and put into consideration the mitigation by the accused persons. These are people of straw. In my estimation they lack the financial wherewithal of compensating the victims of this murder.

The first accused is a single mother with children in university the second accused is a young man with children in primary level. Justice must be tempered with mercy. A protection trust fund meant for compensation of victims is yet to be established. It is my considered view that owing to the rampant violation of victims rights a fund ought to be established soonest for compensation of victims.

Meanwhile, I find it would not be in the interest of justice to order that the accused persons personally and individually compensate the victims. This would amount to punishment of their families in the event that a custodial Sentence is meted out on them. The victims of this murder are not without redress. They are at liberty to institute civil proceedings against the Accused persons and the government as the employer. Therein lies proper and adequate compensation. As regards Sentence itself, the Court notes that there has been rampant misuse of firearms by the police.

The National Police Service Act provides for conditions as to the use of firearms. Its mandatory for a police officer to avoid the use of firearms.

Rule (3) of the sixth schedule is in the following terms,

“A police officer shall make every effort to avoid the use of firearms especially against children”.

In the present case, there was reckless and wanton misuse of firearms resulting in the death of an innocent child. Whereas the Court appreciates the work of police a message must be send to the police to the effect that the citizenry of this country have entrusted unto them dangerous weapons to secure their own security (police) and that of the populace.

To do otherwise would be uncalled for.

In the present case I find that a custodial sentence is warranted and merited. I have borne in mind that the Accused persons are first offenders. I have considered all the mitigating factors adduced while juxtaposed against the circumstances of this case and public interest and I sentence each of them to seven years (7) imprisonment for the offence of manslaughter contrary to section 202 of the Penal Code. Right of Appeal fourteen (14) days explained.

Sentence meted out this **15th** day of **February, 2016**.

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M. MUYA

JUDGE

16TH FEBRUARY, 2016

In open Court and in the presence of:-

Learned Counsel for the prosecution Mr. Muteti

Learned Counsel for the defence Mr. Magolo

Court Assistant Mr. Musundi

M. MUYA – JUDGE