



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MACHAKOS

CRIMINAL CASE NO. 17 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

LAWRENCE NGUMBI MALITA.....ACCUSED

SENTENCE

Lawrence Ngumbi Malita (hereinafter referred to as “the Accused”), was initially charged with the offence of murder contrary to section 203 and section 204 of the Penal Code. An offer was made subsequently by the Defence counsel to plead to the offence of manslaughter, which offer was accepted by the Prosecution. The Accused thereafter on 22nd June 2016 pleaded guilty to the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The particulars of the offence were that on 22nd February 2015 at Kiongwani area, Kiou sub-location, in Mukaa District within Makueni County, he unlawfully killed Makau Manthi.

On 22nd February 2015 at 7 a.m. in the morning, the accused while accompanied with the deceased Makau Manthi (hereinafter referred to as “the deceased”) and a brother of the deceased, namely Jared Manthi, went to dig trenches at the farm of one Mutuku, which work they had earlier started. The deceased and accused agreed that the deceased would dig the trenches while the accused would remove the soil from the trenches with a spade. The accused then decided to rest under a tree while the deceased was digging.

At 12 noon on the same day the deceased’s brother went to Kiongwani market to look for drinking water, and left the accused under the tree. He then came back with water after a short while, and told the accused and the deceased not to drink his water. The deceased then asked the accused to go and look for drinking water. The accused then left where he was sitting and went to the trench where the deceased was digging, took the spade and threw it in the direction of the deceased, which spade hit the deceased at the back of the head, who fell down bleeding from the head.

The deceased brother asked the Accused to get a *boda boda* (motor cycle), which he did and the accused together with the deceased’s brother then put the deceased on the *boda boda* and started the trip to hospital. On the way when they checked on the deceased, they found he had died. They then removed the deceased from the *boda boda* and placed him under a tree. The Accused then saw a police motor vehicle GK B 834B driven by a police officer called Jackos Kimathi Nyagati, which he stopped and explained to the police officer what had happened. The police officer called Sultan Hamud Police Station and explained what had happened to the Officer Commanding Station(OCS) who told him to arrest the Accused. The Accused was arrested and taken to Sultan Hamud police station. The body of the deceased

was subsequently taken to Kilome Masii Hospital Mortuary by PC Paul Rotich and C. I. Mainde who went to the scene of crime.

A post-mortem on the deceased was undertaken on 5th March 2015, which was witnessed by Angelina Mumo the deceased sister, and a neighbour called Gabriel Mbulo. The post-mortem form was filled and a report made by the doctor who undertook the post-mortem, which the prosecution produced as an exhibit in this Court. The post-mortem report showed that the cause of death was a severe head injury, being a depressed fracture of the skull with significant intracranial hemorrhage, due to a sharp blunt object.

The Accused admitted the above-stated facts that were narrated to the Court by Ms. Mogoi, the learned Prosecution counsel.

The Accused was convicted of the offence of manslaughter on his own plea of guilty, and I am now called upon to pass sentence bearing in mind that the maximum sentence for the offence of manslaughter is life imprisonment under section 205 of the Penal Code.

Ms Gichuki, the learned Defence counsel, submitted in mitigation that the Accused is deeply remorseful and traumatised by the death of his best friend and seeks leniency. Further, that he has been in custody for more than a year which is enough punishment, and that the family of the accused and deceased have since reconciled.

The prosecution counsel filed a victim impact statement sworn on 1st August 2016 by Agnes Mumbua Manthi, the deceased's mother. The deceased's mother stated that the deceased and accused person spent the night in her house on 21st February 2015, the night before the deceased was killed, and that she believes that the deceased death was an accident as the accused and deceased were best friends and very close. Further, that the family of the accused, who are their neighbours and friends, helped and took part in the preparations for the funeral of the deceased, and that the clans of the two families have already conducted cleansing rituals according to their culture. The deceased's mother averred that she has no ill will against the Accused whom she considers as her son, and has forgiven him as he did not intend to kill the deceased who was his best friend.

The Court also called for a pre-sentencing report from the Probation Service, which report was filed in Court on 2nd August 2016. It was noted therein that the Accused is 24 years old, a first offender and of good character, and admitted committing the offence against the deceased who was his best friend which he deeply regrets. The probation report noted that there is no ill will from the deceased's family and that the family of the accused assisted in the deceased's funeral arrangements. It was also stated that the family of the accused and deceased have reconciled and compensation paid under Kamba customs and traditions. Further, that the deceased's family had asked the Court to show the accused leniency. The report recommended that the accused is suitable for a non-custodial sentence and that he be placed on a probation sentence.

I have considered the facts of the case and the circumstances in which the deceased's death occurred, as well as the mitigation, victim impact statement and pre-sentencing report by the probation service. It is evident that the Accused had no intention of killing the deceased by the act of throwing the spade, and that he made efforts to try and save the deceased's life and reported the incident to the police. He also had no previous record of offending, and his home environment is also conducive and will be more appropriate for his rehabilitation given that the deceased's family is willing to welcome him back to the society.

I therefore consider a non-custodial sentence to be appropriate in the circumstances of this case, and also bearing in mind that the Accused has been in custody for one and a half years. I accordingly sentence the Accused to one (1) year probation sentence, **under the supervision of, and direction of the Probation Officer in Makueni County, and order that the Accused to be hence forth released from custody unless otherwise lawfully held.**

Orders accordingly.

DATED AND SIGNED AT MACHAKOS THIS 3RD AUGUST 2016.

P. NYAMWEYA

JUDGE