



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 68 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

NEWTON NGANGA NJUGUNA.....ACCUSED

**RULING**

The accused **Newton Nganga Njuguna** was initially charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.

The particulars of the offence were that on 20<sup>th</sup> day of June 2013 at **Arboretum Forest along Arboretum Drive** in **Kilimani** within **Nairobi County** murdered **Wycliffe Ongadi Ndei**. Before the trial commenced, the Director Public Prosecution reconsidered the charge and made an offer for the lesser charge which the accused accepted. The plea agreement was filed in court on 24<sup>th</sup> July 2014. However, the court declined to accept the plea agreement and ordered that the accused undergo a psychiatric evaluation and a comprehensive report be filed in court. This order was necessitated by the facts of the case which had emerged in the course of the proceedings which raised a concern that the accused may not have been of sound mind and therefore incapable of entering into a plea agreement in law.

The accused was examined by Dr. Kamunge (Consultant psychiatrist) at Mathare National Teaching and Referral Hospital. He also interviewed his relatives and prepared a comprehensive report declaring the accused fit to plead. The report was filed in court on 7<sup>th</sup> November, 2014. Following this report, the court accepted the plea agreement and the accused took plea on the lesser charge of manslaughter on 20<sup>th</sup> November, 2014. He pleaded guilty and was convicted on his own guilty plea. The prosecution produced the post-mortem report in respect of the deceased dated 1<sup>st</sup> July 2013 which report showed that the deceased died of manual strangulation.

The facts of the case as read to the court by the learned prosecutor were that on 20<sup>th</sup> June 2013 at 2.15a.m. a forest ranger received information from the accused Newton Nganga Njuguna that he had been accosted by the deceased while asleep in the forest. He strangled the attacker. The deceased had an iron bar and he attempted to hit him. He subdued the deceased and ran to report to the night guard who called the police. The police arrived at the scene and found the body, a hooded maroon jacket and new jumpers. The body was photographed and removed to the mortuary. The accused was arrested and taken to the police station where he was interrogated. The accused was subsequently charged with murder which was subsequently reduced to manslaughter.

In mitigation, learned defence counsel Ms. Odembo told the court that the accused was remorseful for having killed the deceased. That it was not his intention to kill but acted only in self defence. Counsel further told the court that the accused had moved into the forest because he suffered depression which

resulted from his family's failure to facilitate his ambition to go to Harvard University to study actuarial science. That he had also tried to join the military but met with rejection. Counsel prayed for a non-custodial sentence.

The pre-sentence report confirms the facts as stated above. It states that the accused, a highly ambitious young man ran away from home to live in the forest at the Arboretum when his ambition to join Harvard University and the Military failed. He had scored an A- in his Kenya Certificate of Secondary Education which he sat at Mangu High School. He declined to join Jomo Kenyatta University of Agriculture & Technology (J.K.U.A.T). It was while at the forest that he killed the deceased whom he alleges had tried to attack him.

I have considered the plea agreement, the mitigation and the probation report. I have also given due consideration to the victim impact statement wherein the victim's family is said to have forgiven the accused and is not opposed to his being given a non-custodial sentence. I am of the view that this case is fit case for non-custodial sentence.

In the premises, I sentence the accused to 3 years' probation. In addition I order that:-

1. The parents/guardians secure him an admission into a University or other institution of higher learning. Evidence of his admission to such institution should be furnished to the probation officer, within 1 year of today's date.
2. The accused be placed under the care and supervision of a qualified psychiatrist and/or counselor for such appropriate period as may be recommended by such expert. The parents/guardians to secure such placement and bear the attendant costs. The evidence of such placement be presented to the probation officer within 15 days of today's date.

Orders accordingly.

**Ruling delivered, dated and signed at Nairobi this 17<sup>th</sup> day of February, 2015**

**R. LAGAT - KORIR**

**JUDGE**

In the presence of:

.....: Court clerk

.....: Accused

.....: For the Accused

.....: For the State/respondent