

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CRIMINAL CASE NO.21 OF 2009

REPUBLIC.....PROSECUTOR

VERSUS

JAPHET KOSITANY.....ACCUSED

SENTENCE

Before this court is one, Japhet Kositany, who is accused to have murdered his brother, David Kositany contrary to Section 203 as read with Section 204 of the Penal Code. The aforesaid charge was later withdrawn and substituted with that of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code pursuant to the plea agreement dated 16th October 2012. The particulars of the offence are that on the 6th day of April 2009 at around 8.00 p.m. at Kipsitet area the accused unlawfully killed David Kositany. The accused pleaded guilty to the charge of manslaughter and was subsequently convicted by the honourable Mr. Justice Mutava who thereafter called for a pre-sentence Probation Report before pronouncing the order on sentence. The Honourable Judge at the moment is not able to sit and pronounce the sentence. Pursuant to the provisions of Sections 200(3) and 201(2) of the Criminal Procedure Code, I am enjoined to complete the exercise.

I have considered the facts tendered in mitigation by the defence counsel plus the Probation Officer's report. The offence took place at 8.00 p.m. on 6th April 2009 and witnessed by the mother of the duo. It is said that Ruth Cheronon Tele was in her house that night when she heard her sons quarrel before resorting to fighting. She saw the accused reach to a panga which he used to cut the deceased on the head. The deceased fell down. Fearing for his life, the accused fled to hide in a nearby bush. The deceased was rushed to Kericho Nursing Home where he passed away while undergoing treatment. The autopsy carried out on the deceased's body indicated that the cause of death was haemorrhage and brain injury secondary to deep cut wound from a sharp object.

In his submissions, the accused said he was remorseful and that at the time of committing of the offence he was under medication for a mental illness. He also stated that he was a first offender. He urged this court to take into account the five years he has been in custody.

The District Probation Officer, Kericho has indicated in his report that the deceased's family aver that the family has reconciled and are ready to receive back the accused. The Probation Officer recommended for a non-custodial sentence. After weighing the scales of justice, I think this is a proper case to pronounce a non-custodial sentence. My decision is based on the fact that the same will promote reconciliation between the accused with the family and the community. This will also give the clan members together with the elders to organize the ritual cleansing of the accused.

Consequently, I direct that the accused be released from custody and sentenced to serve 3 years in Probation under the supervision of the District Probation Officer, Kericho. The accused must show good behaviour during the probation period.

Dated, signed and delivered in open court at Kericho this 18th day of July 2013.

J. K. SERGON

JUDGE