

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL CASE 19 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

LEREAS LENCHURA.....ACCUSED

JUDGMENT

The accused, Leraas Lenchura, a World War II Veteran, now aged 89 years of age, was originally charged with murder contrary to Section 203 as read with Section 204 of the Penal Code, (Cap. 63, Laws of Kenya). Following a Plea Bargain Agreement dated 20th June 2012, and duly executed by the State, and the accused, the accused was charged with the lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code, (Cap. 63, Laws of Kenya). He pleaded guilty to the lesser charge of manslaughter after the original charge of murder was withdrawn. The only question here is one of sentence.

The particulars of the charge were that the accused on the 12th day of February 2011, at Lerata “A” village in Samburu East District within Samburu County unlawfully killed LOTIYAN LEKAPANA.

Under Section 205 of the Penal Code the punishment for the offence of murder is a sentence of life imprisonment. Under the Plea Bargain Agreement aforesaid, the State undertook to make no recommendation as to the specific sentence that the court should impose, but undertook to provide the court with any and all information pertaining to the sentencing, including but not limited to all relevant conduct.

According to the facts provided by the State, the date was 12th February 2011. The time was 4 p.m. The locality was Lerata “A” Sub-location of Samburu East District within Samburu County of the Rift Valley Province, Kenya. The deceased Lotiyan Lekapana had gone to fetch water at the community bore hole at Lerata Trading Centre.

On arrival, the deceased found a long line and crowd of people waiting to draw water. He made a request to fetch water first, and his request was granted. However the time the deceased was allowed to draw water was also the time of the accused. So when the deceased asked the accused to draw water, the accused refused and a quarrel ensued. That quarrel degenerated into a fight and in the course of that fight, the accused stabbed the deceased. The accused too sustained injuries at the hands of the deceased.

A post-mortem conducted upon the deceased body established the cause of death as cardiopulmonary arrest due to severe haemorrhage secondary to penetrating injury.

The accused was also subjected to mental assessment to establish whether he was fit to stand trial, and this was found positive.

When asked to confirm these facts, the accused confirmed the facts as true, but added that it was the deceased who attacked him first, and he fell to the ground with the deceased and in the process he stabbed the deceased while he was lying on the ground.

The Plea of Manslaughter was consequently confirmed.

On the question of sentence the State submitted that the accused be treated as a first offender and asked the court to look at the intervening circumstances including the Plea Bargain Agreement.

On his part Mr. Njogu learned counsel for the accused submitted that the accused was remorseful, the court should take judicial notice of the fact the quarrel was over access to water, a scarce commodity in

Samburu, water there, is a matter of life and death.

The deceased was a young man aged 55 years of age, and therefore much stronger than the accused at 89 years of age. The stabbing was at the spur of the moment, there was no intention on the part of the accused to kill the deceased. It is normal in that area to walk around armed at all times, even the deceased too was armed with a rungu and used it against the accused. Counsel asked the court to temper justice with mercy and give the accused a lenient sentence.

I have considered the submissions by both the State Counsel as well as counsel for the accused. I accept argument of both counsel that the accused at age 89 years, is a first offender. I also accept argument by counsel that the competition for water in the arid and semi-arid north of the Country is a veritable life and death struggle, and there are many a tale, like in the present case, where such struggle has led not to the death of one person, but to calculated massacres of innocents and destruction of property.

Of course under the Constitution of the Second Republic, the State has assumed a positive undertaking to provide both water and shelter to these vulnerable areas and communities. The inhabitants of these areas, like the accused in this case, have an obligation to share the limited resources in a civil and orderly manner without fights which lead to unnecessary loss of life. I think that is the situation in this case. If it were not for the accused's advanced age, I would have given him a deterrent sentence.

However because of the accused's advanced age I fine the accused to pay one female camel to the family of the deceased, and to five years suspended sentence during which time the accused shall report once every 2 weeks to the area Chief.

The accused shall therefore be released forthwith from prison custody to serve the term in his home area and report to the area Chief as aforesaid, in addition to the said fine. In default he will serve one year imprisonment.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 19th day of July, 2012

J. ANYARA EMUKULE
JUDGE