



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Criminal Case 8 of 2008

REPUBLIC.....APPLICANT
-VS
ALBERT KUBAI MBOGORI.....RESPONDENT
SENTENCE

The accused is a first offender who has been convicted for the lesser charge of manslaughter, contrary to Sec. 202 as read with Sec. 205 of the Penal Code. The same is lesser but cognate to the original charge of murder contrary to Sec. 203 of as read with Sec. 204 of the Penal Code, Cap 63, Laws of Kenya. Besides the above, the court has also considered carefully, the submissions by Ms. Wafula, State Counsel. Specifically she urged the court to give an appropriate sentence given the fact that there was reckless use of firearms. Apart from the above, she also called for a deterrent sentence.

On the other hand, the defence counsel, Prof. Githu Muigai submitted very moving mitigating factors. He eloquently explained how deeply and profoundly, the accused regrets the circumstances that resulted in the death of the deceased. Apart from the above, he also submitted at length how remorseful the accused is and that he did **not** have any ill-will or malice. To him the incident was a tragic, terrible accident and he described the same as a manslaughter of the most benign variety. In addition to the above, he also informed the court that the accused is 45 years old, married with three young children and that for the last three years, he has been licenced to carry a gun. That apart, he also submitted that the accused has been in custody for 1year 7 months and has been of exemplary behaviour. While acknowledging receipt of the victim impact statement, the learned defence counsel expressed deep sympathy to the deceased's family and pleaded with the court to pass a non-custodial sentence. In all humility, the learned defence counsel acknowledged that human life is irreplaceable and that the focus should now turn to the accused. In his well-researched book titled "Sentencing and Criminal Justice" 2nd Edition, the author, Andrew Ashworth stated as follows:

"Maximum discretion should be left to the court, and any encroachment on this is likely to lead to injustice."

On the other hand, when Lord Lane was refusing to allow the continuation of research into Judge's sentencing practices: Oxford Pilot Study (1984) at pg 64 – he stated that:

"Sentencing is an art and not a science."

This court has carefully considered all the submissions made by the learned counsels. I wish to reiterate the fact that the accused did **not** know the deceased and in fact he did **not** have any quarrel or grudge whatsoever against him. Though the killing was **not** premeditated it could have been avoided if the accused had been cautious or courteous enough to have reported the matter at Lang'ata Police Station. Thereafter, the accused should have left the police to conduct their investigations and take necessary

action. The conduct of the accused to return to the scene after hostilities from PW6, and his friends was neither prudent nor wise at all. This court also notes that the conduct of PW6, his wife and friends was **not** exemplary at all. Apart from the above, the court has also carefully seen the victim impact statement that was availed to the court by the deceased's family. The same was received by this court under Sec. 329 (c) of the CPC. The said provision was introduced following the passage of the Criminal Law (Amendment) Act, No. 5 of 2003. Having read the victim impact statement, the court has **no** doubt that the killing of the deceased had a profound effect on the family of the deceased.

Given the **TOTAL CIRCUMSTANCES** of this case, I hereby sentence the accused to 14 months imprisonment. Right of Appeal explained.

MUGA APONDI

JUDGE

Sentence read and signed in open court in the presence of the accused

Mr. Gikunda for accused – present

Ms. Mwanza for Mutoti for Republic - present

MUGA APONDI

JUDGE

16TH JULY, 2009