



REPUBLIC PROSECUTOR

VERSUS

JOSEPH KIPSANG SIMATEI ACCUSED

JUDGEMENT AND SENTENCING

The Accused, Joseph Kipsang Simatei was on 2nd February, 2005 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 the 28th day of November, 2004 at Kosyin Farm in Uasin Gishu District within the Rift Valley Province, murdered JANE CHEPTANUI KEINO.

The Accused pleaded not guilty when the Charge and particulars were read to him. It took sometime for the Accused to be medically examined and a medical report submitted to Court after the Court ordered a second medical examination. Upon consideration of his medical report, the Accused's Counsel Mr. Kipnyekwei took instructions from his client and offered to concede to the lesser charge of manslaughter. The Prosecution considered the request and offer and subsequently accepted the same. The Prosecution then on 8th May, 2007 substituted the Charge of Murder with that of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. When the new charge and particulars were read to him, the Accused pleaded guilty to the offence.

The Senior Principal State Counsel Mr. A. J. Omutelema then read out to the Court and the Accused, the facts of the case.

It was stated that the Accused was the father of the deceased Jane Cheptanui Keino a 12 year old girl. The deceased had been suffering from a heart condition for 6 years. She was undergoing treatment and required a specialized treatment at Kenyatta National Hospital. On the 29th November, 2004, she was to be escorted to the Hospital by the Accused. In order to raise the money to cover the medical costs, he arranged for a fund-raising. However, the fund-raising did not fetch the required amount. He then decided to sell part of the family land to raise the funds. However, the family members refused the land to be sold.

On the morning of 28th November, 2004, the Accused suddenly picked a knife, got hold of the deceased and slit her throat. She sustained serious injuries and died instantly. Eunice Jepkemoi, another daughter of the Accused heard the commotion. She ran into the house and found the Accused holding the child who was bleeding profusely. Eunice screamed and the members of the public came when they arrested the Accused. He was taken to the District Officer's Office at Sirikwa. The Soy Police were also notified.

Police Officers visited the scene and removed the body to Moi Teaching and Referral Hospital. The Accused was arrested at the D.O's Office at Sirikwa and placed in custody.

On 30th November, 2004, Prof. Koslova did a post-mortem on the deceased's child's body. In the opinion of the Doctor, the cause of death was a homicidal cut throat wound with division of the larynx, phalanx and great neck blood vessels with superficial cut of the body and 4th cervical vertebrae and

excessive loss of blood. A defensive cut on the right thumb was also noted. A copy of the post-mortem report was produced in Court.

On the 30th November, 2004, the Accused was escorted to the hospital. He was examined by Dr. Imbenzi who concluded that the Accused was in control of his faculties and well-oriented and that he could stand trial. He was subsequently charged with the offence of murder which has now been reduced to that of manslaughter.

The Accused upon being asked whether he understood the stated facts and asked to plead duly accepted the same and pleaded guilty to the offence of manslaughter. This court then convicted him of the Charge.

In mitigation, his Counsel stated that the Accused was the father of the deceased who was unwell for a period of 6 years. It was stated that the Accused lived with the deceased and he took care of her day and night for the said period. The sickness of the deceased was a pain for everyone. That the family bore the pain for 6 years and were not seeing an end to it. It was further submitted that the Accused was a poor man and all the resources of the family had gone towards medical care of the child. A fund-raising was held where the family approached the community for support but the money raised was not sufficient to cover the medical expenses. The Accused then decided to sell a portion of family land but the family refused.

It was added that this refusal caused the Accused a lot of frustration. There was a deadline yet her health condition was deteriorating. That due to the frustration, confusion and in a moment of temporary insanity the Accused picked a knife and proceeded to commit the unfortunate act.

Counsel further submitted that the accused acknowledges it was a wrong act but he was not in control of himself. That he had no means to salvage the situation due to poverty. The Accused stated that he was remorseful and a first offender. He has nine children, the youngest being in Standard five (5). He said that his wife and mother of the deceased died while he was in custody. As a result there was no head of the family at home. He added that the family was disintegrating.

In view of the circumstances, he said that this was a case fit for a non-custodial sentence. Counsel argued that there were exceptional circumstances and pleaded that the Accused be released to go back home to care for the other children. He is to serve the non-custodial sentence while assisting his family.

I have carefully considered the charge, the facts stated by the Prosecution and admitted by the Accused. I have also considered the Second medical report submitted and the strong mitigation made on his behalf.

The medical report revealed that the Accused was 56 years old. The Accused carried out a brutal and heinous act upon his little daughter. She was 12 years old and had sadly suffered a heart condition most of her life. It was the duty of the Accused as her father to look after her, and protect this little child who never saw any good health or happiness of growing up as other normal children. She needed the care, love, affection and protection of her family including her father.

This Court appreciates and sympathises with the family of the Accused, and the Accused in respect of what they had gone through and endured over the period of 6 years. However, the illness of the child was not self-imposed and was due to fate and if one believes in the Almighty, it was God's plan. No human being had absolute control over her condition. The Accused and his family were poor and deprived. Their meagre resources was not sufficient to cater for the medical expenses required. To the contrary they were further impoverished. Poverty is not a crime or something to be ashamed of. It is a fact of life which all of us some try to grapple with and endeavour to overcome.

It is a fact that the Accused's family could possibly have been helped or assisted by the medical authorities. There is no evidence that they sought the help of the Government in particular the Ministry of Health and other health providers. In such a situation, such a burden is not an individual's burden but that of the Government and the Society at large. This Court is of the view that the Accused's frustration and

despair could have been alleviated and possibly removed had he sought assistance from the authorities.

Poverty, frustration and despair are not defences for the cruel wanton, and brutal act committed by the Accused. It was certainly not a solution to the problem facing him and the family. To the contrary, this Court is of the view that the act taking into account all circumstances was one of selfishness and totally insensitivity to the life, of a defenceless little girl who must have always believed to be in the good care and custody of her beloved ones. It was an act of recklessness and betrayal.

In the view of the foregoing, this is certainly not a case that merits a non-custodial sentence. This Court notes that the other children of the Accused are at present deprived of the love and care of their parents and that possibly the Accused could be of assistance when he rejoins the family. Be that as it may, this Court must pass a sentence commensurate with the gravity of the offence taking into account all circumstances. This was not a case of any type of provocation or self-defence.

I have taken into account that the Accused has been in custody from 28th November, 2004 a period of two and a half (2½) years. I do hereby sentence the Accused to serve a period of six (6) years imprisonment from the date hereof.

DATED AND DELIVERED AT ELDORET ON THIS 29TH DAY OF MAY, 2007.

M. K. IBRAHIM

JUDGE

Right of Appeal explained to Accused. The Accused has a right to appeal within fourteen days.

M. K. IBRAHIM

JUDGE