



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO. 19 OF 2006

REPUBLICPROSECUTOR

-VERSUS-

IBRAHIM KARIUKI MAINAACCUSED

RULING

The accused was originally charged with the offence of murder contrary to s.203 as read with s.204 of the Penal Code (Cap. 63, Laws of Kenya). On 28th February, 2006 he pleaded not guilty before **Apondi, J** but on 21st June, 2006 learned counsel for the accused, **Ms. Obara** indicated that the accused had lodged a request before the Director of Public Prosecutions to be allowed to plead to a lesser charge, manslaughter.

The accused's request was accepted and on 26th September, 2006 fresh information was filed, charging him with manslaughter contrary to section 202 as read with section 205 of the Penal Code (Cap. 63, Laws of Kenya). On the same day I read out the charge to the accused, being interpreted in Kiswahili as suited the accused, and he pleaded guilty. The charge was that the accused had, on 23rd October, 2005 at Soweto Village in Nairobi, unlawfully killed **Peter Mwangi Ndekere**.

Learned State Counsel **Mrs. Ouya** then gave an account of the circumstances in which the offence had been committed. The deceased, an adult male, lived with his brother-in-law, the accused, at Soweto in Nairobi. On 23rd October, 2005 the accused brought home a piece of meat; he requested the deceased's wife to cook it for him, and he went out. In the meantime the deceased arrived, to find his wife cooking the meat, at which action he took umbrage and ordered her to stop cooking the meat. He removed the meat from the pot and threw it away. When later the accused asked to be served the meat, he was informed by the deceased's wife that her husband had disposed of it; and when the deceased (who had left the house) returned later, the accused demanded a refund of the money which had been paid in purchase of the meat; and a fight thereupon broke out between the two. As they proceeded with the fight, now outside the house, the accused seized a hoe-handle and repeatedly hit the deceased on the head. Members of the family managed to separate the two, but only when already the deceased was lying unconscious. Being apprehensive of the deceased's grim survival prospects, the accused fled.

The deceased was rushed to Kenyatta National Hospital, where he died as he underwent treatment. The autopsy conducted on the body of the deceased revealed that he had sustained severe head injury, attributable to blunt-object trauma; and such injury was consistent with the wooden weapon which the accused had used.

The accused accepted the factual account rendered by learned counsel; whereupon counsel informed the

Court that, in accepting the offer to plead guilty to manslaughter, the prosecution had taken into account the fact that the accused had been provoked by the action of the deceased in throwing away his piece of meat; also the fact that the fatal attack happened in the course of a fight; and that the assault causing death took place in the heat of the moment, when there had not been sufficient time for a cooling-off of tempers. Learned counsel urged that the accused be convicted, and sentence awarded taking into account that human life had been lost through the act of the deceased.

A ruling of the Court pronouncing the conviction of the accused was then made as follows:

“The accused offered to plead guilty to a lesser charge of manslaughter, in place of the original charge of murder.

“I have read the charge information to the accused ...

“The accused informed the Court that he understood the charge, and he pleaded guilty. He also accepted as true the factual account rendered by learned State Counsel Mrs. Ouya.

“I now find the accused guilty on his own plea, of the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code (Cap. 63). On the 23rd October, 2005, at Soweto Village in Nairobi, he unlawfully killed Peter Mwangi Ndekere, and he now stands convicted of that offence.”

Sentence remained outstanding, and learned counsel **Ms. Obara** made a plea in mitigation in the following terms. The accused is aged 28 years, and is married with two children – one being a student in Secondary School, Form I while the other is a pupil in Primary School, Standard Two. The accused is the sole bread-winner for his family; he is remorseful, and tenders his sincere apology to members of his family, to the public and to the Court. The accused expresses a willingness to have a change of character and to be a good, law-abiding citizen; he prays for leniency and for an opportunity to be rehabilitated; he prays for a non-custodial sentence, to enable him to continue caring for his family.

I have given anxious attention to the circumstances in which the offence of manslaughter was committed by the accused; and I have considered the extenuating elements urged by learned counsel. I am guided by the basic principle that all people live in a social context, and while enjoying life’s amenities in the context of the social sustenance of others, they must adopt and practise civilised standards of self-control, tolerance and respect for humane values. If anyone fails to uphold these principles, and in the process unlawfully terminates the life of another, such a person shall be punished in such a manner as to vindicate humanity, and to serve as a deterrent.

Section 205 of the Penal Code (Cap. 63) reposes in this Court a wide latitude, in the imposition of sentence for manslaughter; the upper limit of the term of imprisonment being life imprisonment, while the lower limit is open-ended. The circumstances surrounding the commission of the offence charged herein, are clear from this ruling; and they lead me to the decision that the accused ought to serve custodial sentence. I hereby sentence the accused to a term of

imprisonment of twelve months, beginning from the date hereof.

It is so ordered.

DATED and DELIVERED at Nairobi this 11th day of October, 2006.

J. B. OJWANG

JUDGE

Coram: Ojwang, J.

Court Clerk: Ndungu

For the Accused: Ms. Obara

For the Prosecution: Mrs. Ouya