



Director of Public Prosecution v Ibrahim (Criminal Case 49 of 2020) [2023] KEHC 19121 (KLR) (21 June 2023) (Sentence)

Neutral citation: [2023] KEHC 19121 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 49 OF 2020
SC CHIRCHIR, J
JUNE 21, 2023**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION REPUBLIC

AND

MOHAMMED IBRAHIM ACCUSED

SENTENCE

1. The accused herein was initially charged with murder contrary to section 203 as read with section 204 of the [Penal Code](#). Later, pursuant to a plea bargain agreement, the charge was reduced to manslaughter.
2. The court ordered for a presentencing report and the sentencing hearing later proceeded by way of oral submissions on May 24, 2023

Accused’s Submissions

3. Through his advocate Mr Mulama, the accused told the court that he was entirely relying on the sentencing report in his submissions. The accused has further submitted that he has no previous criminal record and therefore prays that he be treated as a first offender. It is pointed out that he never finished school because he suffers from some mysterious disease characterized by episodes of violent behavior; That he has a brother with similar ailment. That the accused has been remorseful throughout. It is the accused’s further submission that the attack on the deceased was during one of such violent episodes. The accused prays for non- custodial sentence to enable him access treatment for the said condition. That save for the unexplained violent outbursts, the accused is otherwise a humble and well- mannered person. He urges the court to consider the probation report favorably



Prosecution's Submissions

4. Ms Odumba for the state reminded the court about the sanctity of human life and asked the court to strike a balance between the sanctity of life and the state of humanity considerations. She further points out that the victim was a 5 years old child and there was no reason as to why such a child would be stabbed severely. As for the alleged episodes of violence, the prosecution submits that there is no evidence that the family took any action to deal with the problem until loss of life had occurred. That failure to deal with the problem is a sign that the family is unable to manage the accused's alleged medical condition. The prosecution contends that consequently, for his sake and that of the society, he should be kept away. That it is apparent that it is only the prison's department who seems to have managed to keep him in check, and therefore it is better to keep him there for a while. Further, the prosecution submits, there is no evidence that the accused suffers from such unexplained violent episodes. It is finally submitted that the probation report is not binding on the court and the prosecution urges the court to ignore its recommendation.

Pre- sentencing report

5. The probation officer's report confirms that the victim was the accused's nephew; That the accused is otherwise a good person save for these violent episodes. His family attributes the violent episodes to some Evil spirits. It is also reported that some of the accused persons siblings are suffering from the same mysterious ailment. The accused is engaged in painting works alongside his father. That he was under such violent attacks, when he killed the deceased.
6. The report further indicates that the family, including the child's mother has forgiven him. The community too, has forgiven him and is ready to welcome him back. The accused, prays for non-custodial sentence to continue to get treatment, which was already underway, for the aforesaid condition.
7. The probation officer recommends that the accused be placed under probation

Determination

8. I have considered the respective submissions of the parties as well as the presentencing report. The presentencing report paints a picture of an otherwise good person, save for some unexplained violent episodes. The community and his family speak well of him.
9. The parents attribute the condition to some evil spirits and that they have sought medical, herbal and spiritual interventions without success.
10. First let me address myself to the unexplained violent episodes which the family and community have attributed to some evil force, and which the sentencing report, as also dwelled much on. Violent episodes can be a sign of mental illness and mental illness of an accused person is a mitigating factor as per paragraph 23.8 of the judiciary sentencing policy guidelines. The family says that they have sought medical intervention for the accused's condition but there was no iota of documentary evidence submitted to the court, in support of this allegation. If the accused has been suffering from mental illness and had been undergoing treatment as alleged, I would have expected some medical records to have been submitted together with the presentencing report.
11. Further I have perused the mental assessment report done on the accused on December 14, 2020 by Dr Mbiti prior to the plea-taking and the doctor's concluding remarks were "he had good memory and could explain what exactly led to his arrest. No history of chronic illness, no mental illness. The above accused is mentally stable"



12. In a nutshell, I dismiss the submissions of some explained illness, whose nature has not been scientifically explained, as no medical report has been submitted in proof. As for the role of “evil spirits” this court does not have the capacity to determine their role in the accused’s actions. It would be a travesty of justice if every offender was allowed to explain away his or her crime by blaming some mysterious spirits, forces, the devil, gods or God. The reason is very simple; -we have no way of ascertaining such forces as they are beyond the human realm. They are beyond our comprehension, control and management and hence man cannot legislate on them or about them. In short, mental illness has not been proved and the accused cannot benefit from this, as a mitigating factor.
13. I have further considered the family response, who are obviously traumatized by the loss of one family member and possible loss of another, to a possible life time in prison. What I however found disturbing about the said report however is what I perceive to be a suppression of the secondary victim’s voice – the victim’s mother. In the “summary and conclusion” part of the report, the probation officer states “the victim was his nephew. Secondary victim is his immediate younger sister. She was limited in her comments, but echoed sentiments made by her family.....” (emphasis added). This was the parent of the child, the immediate secondary victim of the crime. I expected that her voice would have been given more space. I therefore expected her interview to be more extensive as opposed to being limited. I find this scanty reference to her views rather odd.
14. Nevertheless, the court takes note of the family and community sentiments to the effect that the accused is remorseful of the crime. He also pleaded guilty, albeit, following a plea bargain agreement. He is a first offender. All the above are mitigating factors as per paragraph 23.8 of the sentencing policy guidelines.
15. However there was also an aggravating factor. The victim was a 5-year-old child. In the presence of a 23 -year old assailant he was defenceless , yet the post-mortem report shows that the accused stabbed him severally. Targeting of vulnerable people like children is an aggravating factor (see paragraph 23.7 of the sentencing guidelines.)
16. Further, life is sacred and punishment must, inter alia, be a denunciation of acts that violate the sanctity of life.
17. In view of the foregoing, I am not convinced that the accused is deserving of a non- custodial sentence.
18. The purpose of punishment is also deterrence and rehabilitation of the offender. I have taken into account the fact that the accused is a young adult reported to have been aged 23 years at the time of the offence. It is my considered view that a time in prison would hopefully achieve the above two purposes for the accused herein.
19. Considering all the foregoing, I hereby sentence the accused to 12 years imprisonment. The sentence will run from the time of arraignment, that is from on December 22, 2020.
20. Right of appeal -14 days

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 21ST DAY OF JUNE, 2023

S. CHIRCHIR

JUDGE

In the presence of:-

Eric- Court Assistant

Accused- present



Ms. Odumba for DPP

Mr. Mulama for the Accused

