



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

HIGH COURT CRIMINAL CASE NO. 53 OF 2018

REPUBLIC.....DPP

VERSUS

WILLIAM THURANIRA KUBAI.....ACCUSED

SENTENCE

1. The offender was convicted of his own plea of guilty, upon a plea bargain agreement, for the offence of manslaughter contrary to **section 202** as read with **Section 205** of the Penal Code.

2. The facts of the case which were set out by the prosecution and accepted by the accused under the plea bargain agreement dated 24/9/2020 were as follows:-

“On the 19th day of June 2018 at around 7:00p.m Peter Kimathi a friend to the deceased (David Kobia) was walking along Karicho road which leads to Nkanda area which is in Karichu village within Igembe North sub-county, when he met with the deceased one David Kobia and they started a conversation. While Peter Kimathi was talking with the deceased the accused person approached Peter Kimathi and the deceased while armed with a panga and without uttering a word cut both legs of the deceased behind the knees using the panga which was in his possession. Peter Kimathi upon seeing this tried to intervene however the accused person was very violent and ran away. Peter Kimathi then tried chasing the accused person.

Peter Kimathi was unable to get the accused person and decided to return back to where the deceased person was and found him bleeding profusely. Peter Kimathi then started shouting for help and there were people who responded among them were Faith Kaari wife to the deceased, a neighbor Mr. Henry Murungi, Gitonga and Kabwi. When they arrived the deceased while still in pain told Henry Murungi that it is the accused person who had attacked him.

Peter Kimathi, Faith Kaaari got a motor vehicle and with the help of the neighbours placed the deceased into it and first went to make a report at Maua Police Station vide OB No.91/19/2018 and later rushed the deceased to Nyambene Sub-County hospital in Maua. The deceased was pronounced dead upon arrival at the hospital.

On the 20th day of June 2018 in the morning there was combined effort from the family of the deceased and member of the public on searching for the accused person, the search began from the accused person’s house whereby they were able to recover the murder weapon a panga which had blood stains. Later during the day the accused person was found hiding in a shamba at Kiutine area. The accused person was then arrested and escorted to Laare Police Station. The accused was later handed over to DCI Igembe North.

A postmortem was conducted on 27th June 2018 and the cause of death was established to be cardiopulmonary arrest due to severe hemorrhage leading to hemorrhagic shock due to deep knee popliteal cuts with a sharp object.”

3. In a “**Victim Impact Statement Report**” for the offender filed by the Probation and After Care Service, the Probation Officer, Alice Mugambi concluded as follows:-

“The offender has been in custody since his arrest in connection with his offence. He confesses that he has suffered immensely while in remand prison. He prays for leniency from this honorable court. He may be considered for Probation Sentence.”

4. Upon objection by the DPP to the recommendation by the Probation Officer, the court invited Victim Impact Statement from the victim’s family, the court invited the DPP to file a Victim Impact Statement by or on behalf of the family of the deceased in term of **Section 329C** of the *Criminal Procedure Code* which provides as follows:-

“329C. When victim impact statements may be received and considered

1. If it considers it appropriate to do so, a court may receive and consider a victim impact statement at any time after it convicts, but before it sentences, an offender.
2. If the primary victim has died as a direct result of the offence, the court shall receive a victim impact statement given by a family victim and acknowledge its receipt, and may make any comment on it that the court considers appropriate.
3. Notwithstanding subsections (1) and (2), the court—
 - a. shall not consider a victim impact statement unless it has been filed by or on behalf of the victim to whom it relates or by or on behalf of the prosecutor; and
 - b. shall not consider a victim impact statement given by a family victim in connection with the determination of the punishment for the offence unless it considers that it is appropriate to do so.
4. The court may make a victim impact statement available to the prosecutor, to the offender or to any other person on such conditions (which shall include conditions preventing the offender from retaining copies of the statement) as it considers appropriate.

[Act NO. 5 of 2003 s. 88]

5. In the report dated 3/2/2021 the Prosecution set out the recommendations of the deceased family as follows:-

“The deceased family are of the view that in order for justice to be served they humbly pray for the court to issue a custodial sentence for the accused person. This is due to the fact that they fear for their lives if a non-custodial sentence is meted upon the accused person”.

6. The Court also heard the deceased’s widow orally in court and the submissions by counsel for the accused and she said as follows:-

“The deceased and accused had [been] married for 10 years. He used to buy and sell miraa. After the death I felt very bad because he is my husband and he left me with young children. The children are one aged 6, the one who knows her father was killed and she doesn’t like to hear anything about the death of her father. The other one was 6 months when her father was killed. David and the accused are related as cousins. I live on David’s shamba. I pray that the court deals with the accused as he killed my husband”.

She is obviously calling for the just punishment of the offender for the criminal act of killing her husband.

7. I have considered that the offender has been in custody for over 2 ½ years since 25/6/2018 when he was arraigned and remanded in custody to await this trial, although bail was granted in the in the nature of a bond of Ksh 200,000/= with one surety on 15/5/2019, the offender was unable to make bail.

8. The court also considers the adverse impact of the killing on the family of the deceased which was deprived of their breadwinner provider and now have to feed for themselves.

9. The court is also guided by the sentencing ruling guidelines from the Kenya Judiciary, which give the objectives of sentencing as follows:-

“4. Objectives of Sentencing

- 4.1 Sentences are imposed to meet the following objectives:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.
5. Community protection: To protect the community by incapacitating the offender.
6. Denunciation: To communicate the community’s condemnation of the criminal conduct.

4.2 These objectives are not mutually exclusive, although there are instances in which they may be in conflict with each other. As much as possible, sentences imposed should be geared towards meeting the above objectives in totality.”

10. Accepting the mutual dependency of the various objections, this court in the particular case before it takes the view that a sentence which meets the composite consistent objectives of deterrence and reformation of the offender is most appropriate for the utilitarian approach of reforming the offender and deterring others who are like-minded to commit the very prevalent crime of grievous harm as a means of redressing social economic grievances in this area. From the DPP’s statement for the victim’s facing aforesaid, it is stated that “according to the deceased family, the reason for the actions of the accused person was with regard to the above mentioned portion of land [0.83 ha of land at Auto between] and the fact that (the deceased) was the only child and [the land] was given to him.

Conclusion

11. In the interests of deterrence for the offenders who are like-minded and for his own reformation and rehabilitation into and into the society and taking into account the adverse impact on the family of the deceased inviting retributive justice, I consider that an imprisonment term of a **period of 10 years** will meet the said objectives.

Orders

12. Accordingly, for the reasons set out above, the court sentences the accused to serve imprisonment for a period of 10 years for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code for which he has been convicted on his own plea of guilty upon a plea bargain agreement herein. The sentence of imprisonment shall run from the date of the arraignment and remand to await trial on **25/6/2018**, in terms of **Section 333(2)** Proviso of the Criminal Procedure Code.

Ordered accordingly.

DATED AND DELIVERED THIS 11TH DAY OF MARCH 2021.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Igweta, Advocate for the Accused.

Ms. Nandwa, Prosecution Counsel for DPP