



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIVASHA

CORAM: R. MWONGO, J

HCCR APP NO 44 OF 2017

(Formerly High Court Narok Sub-Registry No.s 2A, 2B, 2C & 2D of 2016)

(Being an Appeal from the Original Conviction and Sentence

in Criminal Case No.570 of 2014 in the Chief Magistrate's Court,

at Narok, T. A. Sitati, SRM)

STEPHEN MONI OLE KELEMBO ALIAS MAINE.....1ST APPELLANT

PARKEN LOSIKANY.....2ND APPELLANT

LETEIYO OLE KARKAR.....3RD APPELLANT

NKUYATA OLE NKAIYIACA.....4TH APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT ON SENTENCING

1. This judgment on sentencing arises because, as found in my judgment delivered on 26th November 2019, the sentences meted by the trial court were improper. This court therefore granted that the offenders be given opportunity to file fresh mitigating grounds and information. It also directed that the Probation Officer and the Prisons Service do provide reports in respect of each of the offenders.
2. The mitigation was made by each offender, and reports were availed as directed.

Mitigation

3. Stephen Moni Ole Kelembo alias Maine said in mitigation:

“I pray to court to take into account my remorse. I wish to be given a second chance. I have no parents. The court should take into account the Prisons and Probation Report. Also to take into account the time served.”

Leteiyo Ole Karkar said:

“I for court to take account of Probation Report. I had two children. They have suffered a lot. I have never been found guilty of such a mistake before.”

Parken Losikany said:

“I wish that the court should take into account the Probation Report and the Prisons Report.”

Nkuyata Ole Nkaiyiaka said:

“I seek for probation; the court to give me a second chance. I am remorseful. The court to take into account the period served”

4. I have taken the mitigation of each offender into account.

Prisons Service and Probation Reports

5. The prisons reports for each offender show the areas where each has been deployed whilst in prison. In addition the Prisons Officer gave his conclusion and recommendation in each case as follows:

Stephen Moni Ole Kelembo:

“He is remorseful for what happened and the loss he has suffered while in prison. He can associate well in the society and is ready to continue with tailoring and farming if he gets the opportunity. He promises never to engage in alcohol taking which influenced him to crime.”

Leteiyo Ole Karkar:

“He is well behaved, remorseful and associates well with his fellow inmates and staff. He can be useful in the society and is willing to continue with animal business as well as farming.”

Parken Losikany:

“He is a well behaved prisoner who is always happy, active and ready to learn. He associates well with staff and fellow prisoners.”

Nkuyata Ole Nkaiyiaka:

“He is remorseful to whatever happened. He has since reformed and can associate well in the society outside prison. He can use his tailoring skills and farming to cater for his family.”

6. The Probation Officers filed pre-sentence reports for each of the offenders. In each case after assessing all aspects of social inquiry, they concluded in respect of each accused person as follows:

Stephen Moni Ole Kelembo:

“The inmate before you is a first offender on record. Inquiries from home describe him as humble and hard working the same was echoed by his area chief.

I therefore recommend that he is suitable for a non-custodial sentence by way of probation order. He is willing to be law abiding and live in harmony with the complainant in the case.”

Leteiyo Ole Karkar:

“Before court is a 40 year man. He is the sole bread winner to his three children after the death of his wife a few years ago. He had a clean social record prior to his arrest. The area chief, members of the community and his family members spoke positive about him.

I recommend that he is suitable for a non-custodial sentence by way of a probation order. This will enable him to carry on with his heavy social economic obligations over his children after death of his wife. He is willing to live in peace and harmony and be law abiding.”

Parken Losikany:

“The appellant is a 35 year old man. From the inquiry and interaction with his home area local administration he has a positive home report as he has never had any previous reports of misconduct.

The appellant has maintained positive ties with his family which has pledged to give him the necessary psychosocial support. They say should the court consider his release he will be accommodated at his maternal grandmother’s home in Ntulele where

there is family land before he gets back on his feet.

The family says can assist the family in supporting their last born who is still in school

The appellant has skills in tailoring which he has acquired while in prison. He says he can use the skills acquired to engage in business and earn a lawful living. He added that he can also engage in farming on family land. With this he has the potential of becoming a resourceful member of society.

A non-custodial sentence may be beneficial to the appellant. The reintegration process back into the community will be overseen. He will be taken through life skills specifically on integrity and core values to ensure that he engages in and maintains a lawful means of earning a living.”

Nkuyata Ole Nkaiyiaka:

“The appellant is a 47 year old man. From the inquiry and interaction with his home area local administration, they say that they believe he has reformed and can continue with the rehabilitation process from the community.

The appellant has maintained positive ties with his family which has pledged to give him the necessary psychosocial support. They say should the court consider his release he will be accommodated at his parent’s home in Naorsura before he gets back on his feet. The family says that they mother is elderly and the appellant can assist the family in fending for her.

The appellant has skills in tailoring which he has acquired while in prison. He was also a business man prior to incarceration. He says he can use the skills acquired to engage in business and earn a lawful living. He added that he can also engage in farming on family land. With this he has the potential of becoming a resourceful member of society.

A non-custodial sentence may be beneficial to the appellant. The reintegration process back into the community will be overseen. He will be taken through life skills specifically on integrity and core values to ensure that he engages in and maintains a lawful means of earning a living.”

7. I have taken the aforesaid reports into consideration in each case. Letenyo ole Karkar was placed in custody on 12th April, 2014, Parken Losikany on 12th April, 2014; Nkuyata Ole Nkaiyiaka on 16th March, 2015; and for Stephen Moni Ole Kelembo, date is not indicated in the Charge Sheet. They have therefore been incarcerated for 6 years 10 months for Letenyo ole Karkar and Parken Losikany and 5 years 11 months for Nkuyata Ole Nkaiyiaka and Stephen Moni Ole Kelembo respectively. These periods should therefore be taken into account in terms of **Section 333 (2) of the Criminal Procedure Code.**

8. I think the appropriate sentence in each case is imprisonment for a term of fifteen (15) years, which I hereby mete, subject to the following conditions:

- a) The first seven (7) years six (6) months from the date of remand custody shall be served in formal custodial imprisonment.
- b) The following three (3) years thereafter shall be served in a non-custodial probationary programme to be designed and facilitated by a Probation Officer in Narok. The record of attendance of each of the offenders at the programme shall be maintained by the Probation Officer and may be requested by the Court at any time.
- c) The remaining years of the sentence thereafter shall stand suspended provided the offender successfully completes the probation programme without being charged and convicted for any offence from the date hereof.

Administrative directions

9. Due to the current inhibitions on movement nationally, and in keeping with social distancing requirements decreed by the state due to the Corona-virus pandemic,

this Judgment has been rendered through Teams tele-conference with the consent of the parties noted hereunder, who were also able to participate in the conference. Accordingly, a signed copy of this judgment shall be scanned and availed to the parties and relevant authorities as evidence of the delivery thereof, with the High Court seal duly affixed thereon by the Executive Officer, Naivasha.

10. A printout of the parties’ written consent to the delivery of this judgment shall be retained as part of the record of the Court.

11. Orders accordingly.

DATED AND DELIVERED IN NAIVASHA BY TELECONFERENCE THIS 1ST DAY OF MARCH, 2021.

R. MWONGO

JUDGE

Attendance list at video/teleconference:

1. Ms Maingi for the Respondent
2. Stephen Moni Ole Kelembo alias Maine - 1st Appellant in person
3. Leteiyo Ole Karkar - 2nd Appellant in person
4. Parken Losikany - 3rd Appellant in person
5. Nkuyata Ole Nkaiyiaka - 4th Appellant in person
6. Court Assistant - Quinter Ogutu