



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT GARSEN
CRIMINAL CASE NO 7 OF 2015
REPUBLIC.....PROSECUTOR
VERSUS
MOSES KIBET KANGOGO.....ACCUSED

RULING ON SENTENCE

1. Moses Kibet Kangogo (Accused) was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He was alleged to have murdered one John Ng'ang'a at the Ngao QRT camp at Ngao Trading Centre within Tana River County on 4th December 2015.
2. At the conclusion of the trial, the Accused was convicted of the lesser offence of manslaughter contrary to Section 202 of the Penal Code.
3. At the Sentencing hearing on 10th September 2020, Ms. Aoko learned defence counsel for the Accused, asked the court to mete out a lenient sentence. She submitted that the Accused had not intended to kill his colleague. That at the time of the offence, he was stressed out because he was over burdened with work and his platoon had not been changed for long. Counsel submitted that the Accused had hitherto been a diligent officer who had served his country well and was due for promotion.
4. Counsel drew the attention of the court to the plight of the Accused's family which she said were suffering as a result of the Accused having been suspended without pay after the incident. She prayed for a non-custodial sentence stating that the Accused had suffered trauma and had been in pre-trial custody for one year. She cited **R .V. Philip Muthiani Kathiwa (2015) eKLR and R .V. Elizabeth Mugoywa (2018) eKLR** where the accused who were convicted of manslaughter were given non-custodial sentences.
5. The Accused addressed the court and prayed for leniency. He stated that he had diligently attended court from Baringo after being granted bond.
6. Mr. Sirima Learned Prosecution Counsel told the court that the Accused was a first offender. He submitted that the court should consider that a life was lost. He urged the court to consider the plight of the victims and to call for a Victim impact statement. Counsel urged the court to mete out a custodial sentence as the same would satisfy the victim's sense of justice. He cited the case of **R.V John Ng'ang'a Gacheru & Anor (2018) eKLR** where an accused who was convicted of manslaughter was sentenced to 15 years imprisonment.
7. A pre-sentence probation officer's report and a Victim impact statement were filed by the probation officer on 4th November, 2020. The report gives the offender's background and work history. Overall the report states that the offender came from a humble background and was a dependable and law abiding member of society whom the family (wife and two and siblings) depended on. It shows that the Accused had served diligently in the Administration Police Service in many parts of the country and was due for promotion. That the Accused was remorseful and regretted his actions which he attributed to frustration at the camp where he had been stationed for 3 months without pay.
8. The purposes of sentencing as captured in The Judiciary Policy Sentencing guidelines (2014) are:-
 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/her 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.

5. Community protection: to protect the community by incapacitating the offender.

6. Denunciation: to communicate the community's condemnation of the criminal conduct.

These purposes are not exclusive in themselves and their application is dependent on the unique circumstances of each case.

9. In **Thomas Mwambu Wenyi Vs Republic (2017) eKLR**, the court of appeal cited the decision of the Supreme Court of India in **Alister Anthony Pereira Vs State of Maharashtra** at paragraph 70-71 where the court aptly summarized the objectives and principles of sentencing in the following words:-

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

10. I have considered the mitigation, the pre-sentence probation officer's report and the victim impact statement. I have also considered the authorities cited to me by the parties.

11. In this case, I have no doubt that the Accused was remorseful. I also observe that he did state during the trial that he was under enormous stress, because his platoon which was in Tana Delta, a hardship area had not been changed for long and that being the most junior officer, he was over burdened with work. On this score the court can only empathize and call upon the State department responsible for the uniformed forces to take a serious view of the mental health of uniformed officers to avert the rising cases of senseless killings such as the one in this case.

12. It is the duty of the court to balance the scales of justice and at no time should the victims of offences be relegated to the background. In this case, the victims were said to be bitter about the loss of their loved one who was also their sole breadwinner. In the interview with the probation officer, they were angry that the Accused's family had never attempted to offer an apology and seek forgiveness and reconciliation over the death of the deceased. They were particularly unhappy because the deceased and the Accused were workmates. It is the court's view therefore that much as the victims expect the maximum sentence to be meted on the Accused, they also desire a reconciliatory gesture from the Accused's family for closure.

13. Having taken all factors into account, I am not persuaded to grant a non-custodial sentence. The Accused shall benefit from a lenient prison sentence which is hoped, will afford him an opportunity, upon release, to seek out the victims and reconcile in order to bring complete closure to the affected parties. As stated in **R. V. Priscilla Cherono Chebet & 2 Others 2021 eKLR**:-

“It is my considered view that reconciliation ought to be given visible and viable space in the criminal justice system as envisaged by Article 159 of the Constitution. For both the offender and victims, genuine reconciliation brings closure to the loss however heinous the crime committed may have been. Reconciliation is even more critical where both the offenders and the victims are family, relatives, neighbours or friends. It therefore behoves the courts where the circumstances of a case permit, to promote reconciliation alongside penal sanctions. In my view, reconciliation speaks to the humanity of the offender and of the victim(s) while penal sanctions speak to society's condemnation of the offender and the offence and the two ought to work in tandem.”

14. The Accused is sentenced to 7 years imprisonment. This sentence has also taken into consideration the cumulative 2 year period that the Accused has been in custody.

15. The Accused has 14 days' right of appeal against both conviction and sentence.

16. Orders accordingly

SENTENCE DELIVERED, DATED AND SIGNED THIS 14TH DAY OF APRIL, 2021

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R. LAGAT KORIR

JUDGE

Sentence delivered in the virtual presence of the Accused, Mr. Omwancha holding brief for Ms. Aoko for the Accused, Mr. J. Mwangi for the DPP and Juma and Kiprotich (Court Assistants).