



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO.E028 OF 2020

LESIIT, J.

REPUBLIC.....PROSECUTOR

VERSUS

EMMANUEL WEKESA BARASA.....ACCUSED

RULING ON SENTENCE

1. The accused, **Emmanuel Wekesa Barasa**, was first arraigned before this court charged with one count of **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence were:

“Emmanuel Wekesa Barasa: On 5th September, 2020 at around 1900 hours at KCC Estate, Kamukunji Sub-County within Nairobi County unlawfully killed No.110235 CPL Tolbert Ochieng Lubanga.”

2. The accused pleaded not guilty. After a successful plea bargaining agreement entered on 8th March 2021, the charge was reduced to that of manslaughter contrary to **Section 202** of the **Penal Code**. The court convicted the accused on his own plea of guilty to the lesser charge of manslaughter. **Section 205** of the **Penal Code** provides that persons convicted of manslaughter are liable to imprisonment for life.

3. Learned Prosecution Counsel, Ms. Ogweni, urged that the prosecution has no previous records of the accused and treated the accused as a first offender. I therefore treat the accused as a first offender.

4. I have considered the accused person's mitigating circumstances by his counsel, Mr. Karanja. Mr. Karanja submitted that the accused is remorseful for the offence. Counsel urged that the accused seeks forgiveness from the Court and from the relatives of the deceased. He stated that the accused has lived a peaceful life. He urged that the accused has a 12 year old son who is dependent on him. The child currently lives with the accused's aunt, since the accused's wife left him. Counsel urged that it is in the best interests of the child if the accused is given a non-custodial sentence.

5. Counsel for the accused stated that the accused is young and if given the chance, he can lead a better life. He submitted that the accused is willing to go for counselling to overcome the trauma caused by the incident. Counsel urged that the accused did not run away from the jurisdiction of the court. The accused's friend found him at his house in the same clothes when he went to identify him to the police. Counsel pleaded with the court to grant the accused a non-custodial sentence with supervision to allow for healing and restoration.

6. I have taken into consideration the fact that the accused has pleaded guilty to the lesser charge of manslaughter thus saving this court's precious time.

7. I have also considered the Probation Officer's Report filed on 10th May, 2021. Both families of the accused and the deceased were interviewed. The accused's father expressed disappointment in his son and described the accused as a difficult child who always found himself in trouble. He stated that the accused has been arrested on several occasions owing to the bad company he keeps. He stated that he has done his best with regard to guiding the accused to lead a better life and as such does not want anything to do with him. He urged the accused to carry his own cross and hoped that time in prison will help him reform.

8. The deceased's father was also interviewed. He stated that the deceased, who was the second born in a family of six children, offered financial support to the family as the deceased's father was retired. He paid school fees for his siblings who are currently in class seven and form three. The deceased's father expressed that the family suffered psychological pain due to the loss of their loved one. He was of the view that the accused should suffer a severe sentence commensurate with the offence.

9. The deceased was a military officer. His employer, according to the Probation Officer's Report, described him as a diligent and dedicated officer who was highly trained in aeronautical engineering. The deceased was involved in servicing fighter jets and training of staff.

10. I have taken into account the circumstances of the case. The facts of the case are that the deceased, Cpl. Tolbert O. Lubanga, was strolling a few meters from his house when he met with two men; the accused and his friend Erick Owino Okiri. The accused was helping his friend walk. They both appeared drunk. The deceased walked past the two men. Erick Owino stepped on a puddle of water which splashed on the deceased and soiled his clothes. The deceased confronted them and demanded an apology. An argument ensued between the deceased and the accused and his friend Erick. The deceased punched Erick and he fell to the ground.

11. The accused came to his friend's rescue. He removed a knife that was tucked in his waist and stabbed the deceased on the upper chest near the collar bone. The accused then fled the scene leaving his friend and the deceased lying on the ground. Members of the public raised an alarm and rushed the deceased to Moi Airbase Clinic where he died while receiving treatment. The post mortem report revealed that the deceased died to massive blood loss after a sharp object force trauma to the neck and a great vessel of blood. The accused's friend was arrested and taken to Dandora Police Station. The accused's friend took the police to the accused's house where he was arrested.

12. The accused has admitted to these facts.

13. I have considered the fact that the deceased started the fight after the accused's friend, Erick Owino, stepped on a puddle of water and splashed the same on the deceased. The accused person came to the rescue of his friend. The deceased attacked the accused's friend and therefore the accused did not sustain any injuries from the fight. The accused's response of stabbing the deceased with a knife on his upper chest was excessive. He was armed with a dangerous weapon, and ought to have known he could inflict fatal injuries on the deceased. The accused also fled from the scene and was arrested two weeks later, on 18th September, 2020.

14. In this regard, I agree with the Probation Officer's recommendation for a custodial sentence. I have considered that the accused is a young man aged 27 years. He has been in lawful custody for a period of seven months. Though the accused urged that he has a 12 year old son who is dependent on him, the Probation Officer's Report indicated that prior to his arrest, the accused lived alone and engaged in heavy abuse of alcohol and maintained associates with criminal records. He is also of questionable character and has been arrested in the past for several misdemeanors.

15. Considering the circumstances of this case, the mitigation of the accused, the Pre-Sentence Report and the fact that the accused has saved the court's time and resources by pleading guilty to the lesser charge of manslaughter, I hereby sentence the accused to serve nine (9) years imprisonment to be calculated from the day he was arraigned before this court on 9th October, 2020.

16. Those are my orders.

DATED AT NAIROBI THIS 11TH DAY OF MAY, 2021.

J. LESIIT

JUDGE

DELIVERED THROUGH TEAMS ON 11TH MAY, 2021.

In the presence of:

Accused person

Ms Kimani for the State

Kariuki Karanja for the accused

LESIIT, J.

JUDGE