



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO. 24 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

JORUM NDUNGU KINGORI alias MZAZI.....ACCUSED

RULING ON SENTENCE

1. The accused was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; upon a Plea Bargain Agreement being entered the charge was reduced to manslaughter;
2. The Plea Bargain Agreement dated 18/03/2021 was adopted by the court upon it being satisfied that the accused had understood the contents and that he had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion;
3. The particulars of the offence were read out to the accused; he was charged with having unlawfully killed John Ndungu Mugambi on the 9th day of August, 2011 at Kagonye Trading Centre in Mumwe Location within Nyeri County; the accused was convicted on his own plea of 'Guilty' to the offence of Manslaughter c/s to Section 202 as read with Section 205 of the Penal Code;
4. At the hearing hereof the accused was at all times represented by Learned Counsel Mr. Kingori whereas Mr. Ondimu was the Prosecuting Counsel for the State; both counsel were invited to make submissions before sentencing was passed;
5. Prosecuting Counsel for the State stated that the accused had been ready and willing to enter into the Plea Bargain Agreement and signed it immediately; Counsel tendered the Post Mortem Report and the Mental Assessment Report into court;
6. Counsel submitted that the convict may be treated as a first offender as the prosecution had no previous records of him; the convict was admitted to bail after spending five (5) months in remand; for close to ten (10) years during the pendency of the trial the convict had never violated his bond terms nor had any negative reports had been received from the police or local administration; which demonstrates good behavior and reformation; from the facts of the case and the behavior of the convict the State was not seeking a custodial sentence and proposed that the period of five (5) months that the convict had spent in remand before being admitted to bail would be an appropriate sentence;
7. In mitigation Counsel for the accused submitted that he was remorseful and regretted the events of the day; that the act was not pre-meditated neither was it aggravated; the evidence on record discloses that this is a proper case for self defence as the deceased had slapped the accused with a butchers' knife which was clearly an act of provocation; the accused only had a pen knife which he was using to chop the '*matumbo*' he was eating; according to the doctor's evidence the injury was minor and would not have been fatal had it not touched a vital artery that caused massive bleeding;
8. The community understood how the incident occurred and had even posted his bail; he was now a village elder and all this demonstrated that he had been accepted back by the community;
9. Counsel prayed for a pardon or a non-custodial sentence on the grounds of his advanced age of 74 years and urged this court to give him a lenient sentence so as to give him a chance to go back to his community and to focus and enjoy his few remaining years;

ANALYSIS

10. It is the duty of this court to impose a sentence that meets the facts and circumstances of the case; this court has considered the full circumstances as enumerated by the prosecution; it was submitted that on the material date the deceased being annoyed by the accused's inability to pay for the '*matumbo*' he was consuming had attacked the accused and slapped him using a butchers knife; the accused fearing for his life struck back with a pen knife that he was using to eat the '*matumbo*'; the stab wound was described by the doctor who performed the Post Mortem as minor and would not have proved fatal had it not struck a vital artery leading to massive bleeding which led to the deceased succumbing to the injury;

11. The applicable law on sentence for the offence of manslaughter is found under the provisions of Section 205 of the Penal Code which reads as follows;

‘Any person who commits the felony of manslaughter is liable to imprisonment for life.’

12. The section provides for the maximum sentence that is life imprisonment; this court has taken into consideration the aggravating circumstances in that the convict used a deadly weapon namely a pen knife in committing the offence; but the facts reveal that the killing was not premeditated; it was the deceased who attacked the accused who fearing for his safety, retaliated in self defence leading to the unfortunate state of affairs;

13. The mitigating factors taken into consideration by this court are that the accused readily pleaded guilty and thus saved on judicial time; also taken into consideration are the circumstances of the case in that the accused’s retaliation was in self defence; his personal circumstances were that he was of an advanced age 74 years; he had also expressed his remorse for his actions that led to the demise of the butcher; there being no previous record the accused is deemed to be a first offender;

14. In the light of the mitigating factors this court is satisfied that the accused is deserving of leniency and a non-custodial sentence; it is noted that the accused was arrested sometime in 2011 and released on a bail on 14/02/2013 which translates to a period of approximately two (2) years spent in remand during the pendency of the trial; and this is found to be a suitable sentence;

FINDINGS & DETERMINATIONS

15. Having taken all factors into consideration this court makes the following findings and determinations;

(i) This period of two (2) years spent in remand is found to be an appropriate sentence;

(ii) The sentence is hereby deemed to have been duly served;

(iii) The convict be set at liberty forthwith unless otherwise lawfully held;

Orders Accordingly.

Dated, Signed and Delivered Electronically at Nyeri this 6th day of May, 2021.

HON.A.MSHILA

JUDGE