



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NUMBER 22 OF 2017

REPUBLIC.....DPP

VERSUS

JOHN NDUNGU KAMAU.....ACCUSED

SENTENCE RULING

1. John Ndungu Kamau was charged with **Murder Contrary to Section 203 as read with 205 of the Penal Code, Cap 63 Laws of Kenya.**
2. It was alleged that on 21st March 2017 at New Location Estate Molo Sub County within Nakuru County he murdered Zephaniah Kiongo Kamau. He pleaded not guilty when plea was taken on the 9th May 2018. This took long because from the time he was presented to court on 30th March 2017, and upon a psychiatric examination, he was found unfit to stand trial. It was only after some time of treatment and further assessment that he was found fit to stand trial.
3. A Plea Bargain Agreement process started on 31st May 2018.
4. On 18th May 2021, the accused told the court that he had signed the Plea Bargain Agreement.
5. On 25th May 2021 the prosecution told the court that the charge of murder had been substituted with **Manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code.**
6. The charge was read and explained to accused and he pleaded. He pleaded guilty, and he was convicted on own plea of guilt.
7. The facts of the case were that on 21st March 2017, the accused, and the deceased who was his brother, were in the house with their mother Susan Wanjiru. A quarrel ensued. The accused picked a knife that was in the room and wanted to stab his brother. Their mother told the deceased to leave the room. He did, but the accused went to the window and continued to abuse him. The deceased came back inside and some kind of scuffle occurred. The accused still had the knife in his hand. He stabbed his brother who walked out of the room and leaned on the wall, only to fall down and die. The matter was reported to the Molo Police Station the body was removed to the mortuary where a post mortem was conducted revealing that cause of death was as a result of loss of blood pursuant to the single stab wound to the chest.
8. The accused was arrested and charged. The knife and post mortem report were produced as evidence.
9. The prosecution submitted that accused was a first offender and proposed a custodial sentence of twenty (20) years imprisonment.
10. In mitigation, counsel for the accused submitted that accused was remorseful for killing his brother. He asked the court to consider the circumstances of the offence, that there was a quarrel, that the knife was at the scene and urged the court to consider a non-custodial sentence, the age of the accused and time of committal of the offence and the arrest.
11. I requested for a pre-sentence report from Probation and After Care Services Nakuru which was filed on 7th June 2021. The Social Inquiry Report revealed that the family described as a disjointed family has nine (9) children, the accused being the 7th born, suffers from low levels of education and abuse of illicit brew.
12. That the accused person was introduced to drugs at an early age.
13. The first psychiatric examination revealed that he was suffering from mental illness, had hallucinations, he had treatment at Molo Hospital Psychiatric unit before his arrest. It also emerged that two (2) of his siblings also suffered mental illness. He was abusing bhang

and alcohol. This report was made on 27th April, 2017.

14. He was referred for psychiatric follow up. Another report was done on 24th October 2017. He was still suffering from hallucinations, poor judgment, and disorientation. He was referred for further treatment.

15. The report dated 11th April, 2018 found him better, mentally sound, no behaviour or speech problem and fit to stand trial.

16. The Social Inquiry Report also revealed that the mother expressed fear that if the accused was released he could pose danger to the other family members. The other siblings were of the view that they would not be able to accommodate him. The family environment is not amenable to his reintegration and the only brother who is stable is deployed in Somalia.

17. Considering these circumstances, the Probation Officer recommended that the accused person be placed on Probation Supervision for three (3) years, one (1) year committed at Makadara Probation Hostel where a vacancy had been confirmed, pending preparation of the family for his reintegration.

18. I have carefully considered the report before me and I have some concerns. The report recommends a non-custodial sentence for a person who suffers from mental illness, who has siblings who have same condition but makes no mention about how to deal with that despite the fears expressed by the prime victim the mother, who was present when offence was committed. Brushing her fears aside, is dangerous as the probation officer did not even make mention of the treatment regimen the accused had undergone at Molo District Hospital. His recommendation that the accused would simply be taken through counselling appears inadequate in the face of the accused person's past medical history. I doubt that this is a case that would rest on counselling alone.

19. In addition the report does not have the names of the accused's siblings, the source of information, and whether the local administration was spoken to with regard to the accused person's, conduct as a person suffering from mental illness. Neither is there any indication that the prison authorities where the accused has been since 2017 had been interviewed as to his conduct and interactions with other prisoners, his anger management among others. Finally, this is a case the court would have expected the Probation Officer to obtain a mental or psychiatrist report or recommendation as to any necessary follow up to prevent relapse and re-offending. Hence before I give the sentence I will require the Probation Officer to address the following issues;

- a. Address the fears of the mother that the accused may be a danger to others if released.
- b. Obtain a report from the psychiatrist, an assessment or diagnosis for purposes of follow up. To this end the accused be escorted to the Psychiatrist for a pre lease assessment and diagnosis.
- c. A report on the accused's life and the prison interaction with other remandees, addressing issues of anger management.
- d. With the above, the proposed reintegration plan for the accused, taking into account his diagnosis as per order (b), and follow up needs.
- e. A confirmation that the Makadara hostel staff have the capacity to manage the diagnosed mental illness.
- f. This order be served on the Prison and Probation, Nakuru for necessary action

Mention on 2nd July before the DR for compliance reports.

Mention before me on 16th August 2021 for orders.

Orders accordingly.

DATED and DELIVERED via ZOOM this 18TH day of JUNE, 2021.

MUMBUA T. MATHEKA

JUDGE

In the presence of:

Court Assistant Edna

Applicant

For state: Ms. Murunga