REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

CRIMINAL CASE NO. 14 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

SIMON KIBET MIBEI.....ACCUSED

CORAM: Hon. Justice R. Nyakundi

Mr Mwangi for the State

Ms Aoko for the Accused

S E N T E N C E

The convict in a negotiated plea-agreement was charged with manslaughter contrary to section 207 as read with section 205 of the Penal Code. He pleaded guilty to the lesser charge of manslaughter followed with a conviction for the offence.

At the sentence hearing, Learned Counsel M/s Aoko submitted that the convict is remorseful, the offence was committed within premeditation, he is a young man capable of rehabilitation and transformation, there is no evidence of past criminal antecedents and finally the circumstances of the offence are such that it is a deserving case of a lesser sentence.

In Learned Counsel quest to persuade the Court for a non-punitive custodial sentence reliance was placed on the following cases;-

> ***R V Philip Muthiani Kathiwa[2015]eKLR, R V Elizabeth James Kimosop[2017]eKLR, R V Sebastian Okwero Mrefu[2014], R V Joseph Yusuf Mimo in Kisumu Criminal Appeal No. 19 of 2010, R V Elizabeth Mugiywa[2018]eKLR, Kabatera Steven V Uganda (Crim. Appeal No.123 of 2001, the Court of Appeal of Uganda stated that; "We are of the opinion that the age of an accused person is always a material factor that ought to be taken into account before sentence is imposed……He (the appellant) was a young offender….failure to consider the age of the appellant caused a failure of justice".***
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> ***The Court of Appeal, in Bernard Kimani Gacheru Vs Republic [2002] eKLR restated that; "It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case"***

The state apparently shied away from making any remarks during the sentencing hearing verdict.

VERDICT

The sentencing legal framework in Kenya is entrenched in our constitution under Article 50 (2), (p) and 6 (a), (b) of the Constitution, the penal code and the Criminal Procedure Code together with other statutes comprising of various penal offenders. There is also the general sentencing policy guidelines of the Judiciary, 2016 which extrapolates in summary as follows;

> ***a) the punishment of offenders;***
>
> ***b) the reduction of crime(including its reduction by deterrence);***
>
> ***c) the reform and rehabilitation of offenders;***
>
> ***d) the protection of the public; and***

e) the making of reparation by offenders to persons affected by their offences.'

In Veen V The Queen [No.2] (1987-88) 164 CLR 465 at 476 per Mason CJ, Brennan, Dawson & Toohey JJ – High Court of Australia stated as follows;-"However, sentencing is not a purely logical exercise and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions"

Before sentencing the accused/convict all these instruments and legal tools should mirror in the final verdict. In the instance case the court pleaded guilty to the offence of manslaughter, as a consequence killed the deceased without any pre-meditation or malice aforethought. It is on record that he is a first offender, of youth age. He has no previous conviction relevant to the present charge or any other known in the criminal data base.

The key aggravating factors in this case involved substantial violence to the victim without any justification or excuse as demonstrated from the facts in the plea bargaining agreement. This unlawful act prematurely terminating the life of the deceased called for an appropriate custodial sentence largely to punish crime and to contribute to deterring offenders from re-offending. Besides there is a high probability of rehabilitation of the convict to a law abiding citizen.

In case of ***R V De Haviland [1983] 5 CR App 109***, the Court stated that;-

"An appropriate sentence is a matter for the consideration of the sentencing judge. Each presents its own facts upon which a judge exercises his or her discretion. Significantly, since the recent development of law following the decision in Francis K.Muruatetu V R [2017] eKLR, trial courts should exercise discretion in a manner that satisfied the sentencing objectives and principles".

Following a consideration on the mitigation and aggravating factors I am of the view that the facts of this case are not suitable for imposition of a life – sentence which is the maximum penalty for the offence of manslaughter. From the foregoing I sentence the convict to a term imprisonment of (10) years with effect from **29th June, 2020**.

Right of Appeal 14 days explained.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 16TH DAY OF JUNE, 2021.

.....

R. NYAKUNDI

JUDGE

In the presence of

Mr Mwangi for the State

Convict- present