



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NUMBER 68 OF 2014

REPUBLIC.....ODPP

VERSUS

NELSON KIPSOI1ST ACCUSED

NELSON KIPSOI KOSKEI.....2nd ACCUSED

SENTENCE (AFTER PLEA BARGAIN AGREEMENT)

1. Nelson Kipsoi Koskei and his elder sister Rose Chepkorir Chumba were jointly charged with the murder of their elder brother Simon Kipchumba.
2. It is alleged that on 28th May 2014 at Sumek Village Rongai District Nakuru County they jointly murdered Simon Kipchumba **Contrary to Section 203 ad read with 205 of the Penal Code.**
3. Following a Plea Bargain Agreement with the ODPP, the two (2) accused persons pleaded to the lesser charge of **Manslaughter Contrary to Section 202 as read with 205 of the Criminal Procedure Code.**
4. It is alleged that on the 28th May 2014 they unlawfully caused the death of Simon Kipchumba.
5. The facts were basically that following some kind of domestic squabble the two(2) attacked their brother and beat him with a piece of wood and a stick. Their mother heard the commotion and tried to stop them but they continued beating him while chasing her away. She raised alarm but no one came. She went back to her house.
6. The following morning she went to Simon's house, there was blood at the door but he was not inside the house. She looked for him only to find his body about 70 meters from his house where the assault had taken place.
7. She reported to the area chief. The police from Rongai Police Station were called. They came and removed the body to the mortuary. The Post mortem was conducted, and the cause of death was found to be blunt trauma from injuries sustained from the beating.
8. The two (2) were arrested on 31st May 2014. The piece of wood and stick were recovered stained with blood. They were charged with murder, now substituted with manslaughter. Each pleaded guilty and was convicted accordingly.
9. The prosecutor said they were first offenders. In mitigation, 2nd accused was said to have a daughter. The 1st accused was single and without children at time of offence.
10. I requested for a pre-sentence report from Probation and After Care Services Nakuru. The Social Inquiry Report revealed that the family of the two (2) accused persons had eight (8) children; four (4) sons, four (4) daughters. At the time of the offence they had just buried their father and they were all at home. Their problem in that family is alcohol abuse, such that all of them, including their parent abuse alcohol. In fact, it was found out the mother of the two (2) accused is sickly due to alcohol abuse. In addition that 1st accused was the one who was almost sober and was reliable and organized in his affairs.
11. The inquiry established that on the material night, there was drunkenness in the home, a quarrel ensued between the deceased and 2nd accused when the deceased went to demand for food from the 2nd accused. This degenerated into a full blown quarrel whereby the two (2) accused beat up the deceased who unfortunately he died.

12. I have carefully considered the facts of the case, the pre-sentence report and the proposal on sentence by each side. These two (2) accused are brother and sister who caused the death of their brother. The socio-economic status of the family is made worse by alcohol abuse. Question is, what is the appropriate sentence?

13. **Section 205 of the Penal Code provides that *any person who commits the felony of manslaughter is liable to imprisonment for life.***

14. **Section 333(2) Of the Criminal Procedure Code states :**

“Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under subsection has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

15. It is noteworthy that the two (2) accused have been in custody since 31st May 2014 a cumulative period of seven (7) years.

16. Each is remorseful for what they did. The family and community are willing to take them back and the Probation and After Care Services has recommended a non-custodial sentence. The officers have identified the problem, and have indicated the support that they will give to the accused persons if they are released and the family as well. This will include guidance on how to manage alcohol issues, and their family disputes.

17. Taking guidance from the law, the Sentencing Policy Guidelines I find that the period of seven years served in remand custody is sufficient punishment. The accused have had time to reflect on their deed and have sobered up.

18. There is need to reintegration and the need to stay sober once released from prison. It is my view that a non-custodial sentence would serve these purposes.

19. Therefore each of the accused persons is placed on probation supervision for three years.

20. During that period they will abide by the Probation Order, breach of which could lead to a custodial sentence.

DATED and DELIVERED via ZOOM this 8TH day of JUNE, 2021.

Mumbua T. Matheka

Judge

In the presence of:

Court Assistant Edna

For state: Ms. Murunga

1st accused present

2nd accused present

Ms. Mungai holding brief for Mr. Orege for the accused persons.