



REPUBLIC OF KENYA

HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO. 14 OF 2020

SAMUEL NJUGUNA MUNYIVA.....APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING ON SENTENCE

1. In sentencing the accused herein, I have considered that; the accused was initially charged with the offence of; murder contrary to Section 203 as read together with Section 205 of the Penal Code. Subsequently, following Plea bargaining agreement executed by both parties dated 20th March 2021, the charges were substituted with a lesser charge of; manslaughter contrary to section 202 as read together with section 205 of the Penal Code.

2. I have further considered that, the matter did not go through a full trial, following the plea of guilty entered by the accused on the charge of manslaughter. Hence the court was saved a lot of the otherwise scarce judicial time.

3. Similarly, I note that the prosecution treated him as a first offender. In the same vein, I have considered, the accused's mitigation on record as stated by his Defence Counsel. Additionally, the circumstances of the offence as revealed by the facts read to the court are considered.

4. The pre-sentence report prepared by the Probation Department is equally considered and reveals that: -

a) Both the victims and accused's relatives were interviewed and their views as expressed in the detailed report;

b) There are no adverse reports regarding the accused's character before the commission of the offence;

c) However, it is evident thereof that, the deceased having been the only son in the family, the impact of his death was and is still very heavy and deep to the family. This is informed by the fact that, a male child, in the African culture, is seen as the "heir" of the family and one who furthers the biological continuity of the family tree;

d) The Probation officers' conclusion that, the accused as of "medium risk" of re-offending;

5. Finally, I have considered the statutory provisions of the law, including Sections, 329 of the Criminal Procedure Code, 24 of the Penal Code that provide for different kinds of punishments, clause (3) and clause 23 of the Sentencing Policy Guidelines of the Judiciary and the objectives of sentence.

6. In conclusion, it is noteworthy that sentencing **remains pre-eminently within the discretion of the court, as held in the case of; Bernard Kimani Gacheru vs. Republic (2002) eKLR** .

7. As a result of the aforesaid, and having taken into account that, the accused has been in custody since the date of his arraignment in court on 9th March 2020, for a period of about one (1) year and two (2) months, I sentence the accused to serve a custodial period of fifteen (15) years imprisonment. Right of appeal in 14 days is explained to him

It is so ordered.

Dated, delivered virtually and signed this 2nd day of June 2021.

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms Odembo for the accused

Ms Kimani for the State

Edwin – Court Assistant