



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

MURDER NO. 12 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

LOIDIMAA LENAPEER.....ACCUSED

RULING ON SENTENCING

1. The accused was charged with offence of **Murder** contrary to **Section 203 as read with Section 204 Penal Code Cap. 63 Laws of Kenya**. Particulars being that on 31/07/2020 at Ngosusu Susian Location, Laikipia Sub-County, Laikipia County murdered Moses Leparleen Saitoti. He pleaded not guilty.
2. However, a plea bargain exercise was entered into culminating with an agreement filed in court on 27/05/2021 subsequently on 06/07/2021 the charge of murder was substituted with one of **Manslaughter** which the accused pleaded guilty to.
3. The prosecution informed court that accused can be treated as a first offender as there was no previous record.
4. In mitigation the accused's counsel tried to reconstruct the fact of case contrary to what the accused admitted when facts were tendered by prosecution after accused pleaded guilty to the offence of Manslaughter.
5. The accused admitted to the facts that as he and his brother Imoloi fought over calf. The deceased (their brother) tried to separate them. The deceased had at his waist a sword hoisted in his waist which accused pulled and tried to use to stab Imoloi but ended up stabbing the deceased on the shoulder causing him to bleed profusely.
6. He died at the scene of attack before neighbours could save him due to bleeding. The cause of death revealed on conduct of the postmortem was that he died of cardiorespiratory arrest secondary to hemorrhagic shock post stab to the chest.
7. The accused's advocate submitted on a case of self defence and relied on the authority of **Truphena 2021 eKLR** where court held that use of force is justified in self defence or prevention of commission of crime. Which also cited the case of **Republic v Williams 1987 (3) ALL ER English care**.
8. The tragedy of the facts herein is that; they are very lean in particulars as it is not disclosed as to who was armed with what between the 2 combatant nor as to who initiated the fight or whether accused had an opportunity to retreat. Nor do we know whether accused sustained any injuries. All these omissions is courtesy of admission of offence and fact and absence of accused fashion of the happening of the act of the fight.
9. The court will have to rely on the lean facts as they and circumstances of the case. It would appear as if once the accused was driving away his herd of cattle, the brother Imoloi confronted him on account of claim of ownership of a calf. The fight ensued.
10. The entry by the deceased into the duel to separate might have been attracted by the fierceness of the duel. It is not known whether he was assisting Imoloi in the fight and/or whether accused was overwhelmed to extent that he had to help himself with deceased's sword. He stabled deceased though it is said his intention was to stab Imoloi his co-combatant.
11. Of course he may not have intended to kill but to save himself from the 'war' while in the heat of the passion of the moment.
12. This may mitigate the wrath of the penalty but not discharged him entirely as the efforts to flee the scene was not established to be impossible. He is a young man aged 28 years as stated by his advocate and unmarried.
13. It is even stated that he had identified a beautiful young Samburu girl to be his lifetime partner thus pleads to be discharged to enable him join her and start procreation and building family as he has already paid advance bride price.

14. He is a first offender and has saved court's time by pleading guilty to the offence. He has been in custody for 1 year now.

15. Taking into circumstances of the case and the foregoing mitigations, I find the accused deserves a sentence of custodial sentence as follows;

i. Taking to account that he was in custody for about a year, he will serve further 4 years' imprisonment in jail as the sentence.

DELIVERED AT NYAHURURU THIS 14TH DAY OF JULY, 2021.

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CHARLES KARIUKI

JUDGE