



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL CASE NO.27 OF 2018

REPUBLIC.....PROSECUTION

VERSUS

VINCENT KIPNGENO MUTAI.....ACCUSED

SENTENCE

1. The Accused person in this case was charged with murder contrary to section 203 as read with section 204 of the penal code which offence was reduced to one of manslaughter contrary to section 202 as read with section 205 of the penal code following a successful plea bargain agreement signed by the Accused person on 12/1/2021.
2. The particulars of the charge of manslaughter were that on 10/10/2018 at KAPLONG village in MOBEGO location of BELGUT sub-county, the Accused person unlawfully killed BETHWEL KIMUTAI TANUI.
3. The facts of the case as presented by the prosecuting counsel were as follows;

On the 10th day of October 2018, at around 4.00pm, the accused person who was slightly drunk went to his father's home (the deceased). On reaching there, the accused picked a quarrel with his father, the deceased, demanding from him cash which he owed him after he heard that the deceased received some money from a tenant who rented one of their shops which the accused claims he built it together with his mother. As they were quarrelling, the deceased told him that it was not a must for him to pay him back his debt. This angered the accused person. He picked a walking stick which was which was there and began to assault the deceased using it. He assaulted the deceased several times while asking him to pay him. The deceased was pleading with him to stop assaulting him and spare his life but the accused could hear none of that and continued assaulting him.

The deceased, fearing further beating gave in and asked the accused to go to his friend who is a businessman selling motor cycle spare parts at a centre called Chemyongaa to give him Kshs.5000/= and take his 4000/= then bring him the Kshs.1000/= balance.

The accused then went to the businessman but on reaching there the man told him that he had no idea and had not communicated to the deceased about the money. The accused got furious and went back to his father's house and told him what the businessman said. The deceased was not bothered and the accused who was by then very furious learned that he was tricked by the deceased and decided to ran sack the entire house for money he believed that the deceased received from one of their tenant.

His search bore no fruit so he picked a walking stick and started assaulting the deceased again. Neighbours came to intervene but the accused threatened them and asked them not to interfere with their family affairs. The deceased then removed an envelope containing a land title deed and gave the accused. The accused took it and left his house.

The accused took a bath changed his clothes, carried some of his belongings and left to unknown destination.

Later at around 6.00pm, the deceased was found dead inside his house by one of the neighbours. The neighbours reported the matter at Sosiot Police Station. Police then visited the scene and found the deceased lying on his bed with multiple visible injuries.

The police carried the deceased's body and took it to Kericho County and Referral Hospital Mortuary where a post mortem was conducted by Dr. Wesley Rotich who formed the opinion that the cause of death was severe head injury due to trauma to the head by a blunt object.

The accused person learnt of his father's death from his hideout through phone calls and surrendered himself at Sosiot Police Station later that night.

The accused person was later charged with the offence of murder contrary to section 203 as read together with section 204 of the penal code. This has now been reduced to the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code pursuant to this agreement.

4. The probation officer filed a Presentence Report which stated that the Accused person is a violent man who killed his father over money from rental premises and after he chased his mother who went to her home.
5. The report also stated that the Accused person lacked proper parental guidance and used to indulge in intoxicating liquor.
6. The family is still bitter about the incident and is against a non-custodial sentence.
7. The court has taken into account the circumstances of this case and the mitigating circumstances as given by the Accused person's counsel.
8. Although the Accused person is a first offender and the only son in the family, the offence he committed is a very serious considering that he assaulted his father mercilessly demanding money received by the father from rental house.
9. The offence committed by the Accused person is a very serious one and it calls for a deterrent sentence. The charge of manslaughter calls for life imprisonment.
10. I have taken into account the fact that the Accused person has been in custody since he was arraigned in court 17/10/2018.
11. The Accused deserves life imprisonment. However, considering the ruling in the **Francis Karioko Muruatetu** case and that the fact that the Accused person pleaded guilty and save the court's time for trial, I sentence the Accused to fifty (50) years imprisonment.
12. The sentence will start running from 17/10/2018 when the Accused person was first arraigned in court and therefore the sentence takes into account the period the Accused person was in custody before he changed plea.
13. The Accused person has a right of appeal to the Court of Appeal against sentence only within 14 days of this date.

Delivered, dated and signed at Kericho this 9th day of July 2021.

A. N. ONGERI

JUDGE