



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CORAM: R. MWONGO, J.

CRIMINAL CASE NO. 2 OF 2018

REPUBLIC.....PROSECUTION

VERSUS

DAVIS KIMUTAI RONO.....ACCUSED

JUDGMENT ON SENTENCING

1. The accused was convicted by this court with Manslaughter contrary to **Section 207** as read with **Section 205** of the **Penal Code**. The court found that the deceased acted from provocation and in self defence.
2. During his mitigation, his counsel stated that the accused was an employee of the Armed Forces who had worked for only seven months; that he was unmarried and comes from a family of five children. He stated that the accused was sorry for the offence which occurred whilst he was spontaneously defending himself when he was attacked fearing he would also have died. He therefore sought the court's leniency; that the court balance justice with mercy, and issue a non-custodial sentence.
3. In the Probation Report requested by the court, the Probation Officer noted that the accused was 23 years old and a reliable member of the family. He was engaged to one Mercy Chepngetich and they were next yet to get married. The Report is dated 12th May, 2021.
4. The Probation Report further indicates that the accused's family had, through a family spokesperson Kariuki Kamwana, said they had been in discussions with the accused's family; that the accused's family had paid Kshs 100,000/= as compensation for burial costs; and that they had no objection if he was given a non-custodial sentence.
5. The Report further indicates that the views from the community as stated by the Chief Olashapani Location are that the accused was humble and disciplined; that the Assistant Chief echoed similar words; and that the community had no objection to a non-custodial sentence. The family members also spoke positively of the accused and begged the court for leniency.
6. The accused's employer (Department of Defence) described the accused as a disciplined officer who had no record of indiscipline in his 18 months in the force.
7. The Probation Officer's Report concluded that:

“a conclusive social investigation revealed that the commission of the offence was not premeditated. He was on a quick self defence action from unknown assailants.

The offender is a Military Officer No. 97538-30. He had only worked for less than 2 years in the service. We recommend to the court to consider him for a lighter sentence most preferably Probation Order Supervision for a maximum period of three (3) years.

If granted, he shall be able to carry out his social obligations to his family and offer his services to the country as a whole.

Our department shall offer him necessary guidance as per his assessed needs.”

8. The role of the court is to mete a just punishment that is appropriate to the crime and meets the social circumstances thereof. The Judiciary Policy on Sentencing has the following objectives:

“Sentences are imposed to meet the following objectives:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.

2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.

4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.

5. Community protection: To protect the community by incapacitating the offender.

6. Denunciation: To communicate the community's condemnation of the criminal conduct."

9. Taking all matters into account, I wish to reiterate the court's judgment on convicting the accused as follows:

"30. During the fight, blows were raining every which way. The accused gave as much as he got. The protagonists were initially the accused and the deceased, with the deceased's buddies coming to support or rescue their friend. I accept that the stabbing that led to the deceased's death was occasioned by the accused; and I so hold.

31.;

32.;

33. No submission based on the facts of this case was made that the accused had an intention to murder the deceased; no evidence was laid out that suggests an intent on his part. The evidence shows that his wallet was stolen from him; that he held and engaged the deceased in an attempt to retrieve it; that a fight broke out as he was repeatedly assaulted; and that he fought back and it was then that he stabbed the deceased; and that he was himself seriously injured.

34.;

Disposition

35. In light of the foregoing, I accept the accused's defence of self defence arising from provocation. Accordingly, I hereby convict him for Manslaughter contrary to Section 207 as read with Section 205 of the Penal Code."

10. The court notes that the offender was in remand prison for two months and thereafter out on bond of Shs 500,000/=. After conviction on 27th April, 2021 he has been in prison for five months, making a total incarceration of about 7 months. The court finds that, the incarceration period is sufficient punishment in this case, and that a non-custodial sentence going forward shall suffice.

11. Taking into account the court's finding, the mitigation, and the probation report, the court deems the appropriate sentence going forward to be a non-custodial sentence on stringent conditions. Such sentence will enable him to have a fresh start in life without snuffing out his expectations for a fulfilled future; and will meet the justice of the situation.

12. Accordingly the offender is sentenced to a non-custodial probationary sentence as follows:

a) He shall serve a Thirty (30) months probationary period with immediate effect.

b) The Probation Officer shall design a rehabilitation programme appropriate for his guidance and assessed needs for use during the offender's probation

c) Such programme shall be placed on record and availed to the offender's employer, the Armed Forces, and the Prison Authorities and a copy may be requested by the Court.

d) The offender shall also pay further compensation of Kshs 100,000/= to the deceased's family within twelve (12) months from the date hereof.

13. Orders accordingly.

DATED AND DELIVERED IN NAIVASHA BY TELECONFERENCE THIS 20TH DAY OF SEPTEMBER, 2021.

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R. MWONGO

JUDGE

In the presence of:

1. Ms Maingi for the DPP
2. Mr. Gichuki for the Accused
3. Davis Kimutai Rono - Accused present at Naivsha Medium Prison
4. Court Assistant - Quinter Ogutu