



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NO. 44 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

GEOFFREY KIPKURUI NGETICH.....ACCUSED

SENTENCE RULING

1. The accused person, Geoffrey Kipkirui Ngetich (“Accused Person”), was originally charged with murder contrary to section 203 as read together with section 204 of the Penal Code. The particulars in the charge sheet were that the Accused Person murdered Daisy Chebet on 21st July, 2019 at Nyota Village in Kuresoi North Sub-county within Nakuru County.

2. The Accused pleaded not guilty to the charges. Later, on 08/07/2021, the Prosecution and the Defence appeared before me with a Plea agreement. On this day, the Accused pleaded guilty subject to the Plea Agreement. The Plea Agreement reduced the offence charged from murder to manslaughter. The Court approved the Plea Agreement, and, after duly complying with sections 137D and 137H of the Criminal Procedure Code, convicted the Accused on his own plea of guilty on the charge of manslaughter.

3. The agreed facts are as stated in the Plea Agreement of the case. I will reproduce them here:

On the 15th July, 2019 the Deceased, Daisy Chebet who was 27 years old, left home and went to stay with the Accused at his home, the Accused was her boyfriend that time. On the 21st July, 2019 the Accused was seen by his neighbours assaulting the Deceased. The neighbours were fearful of saving the Deceased as the Accused was well known for his violent behaviour within the neighbourhood and regularly assaulted the Deceased. The Accused had on previous occasions threatened and chased any persons with a panga when they would try to intervene when he would assault the Deceased.

The Deceased was not seen again for two weeks raising an alarm to the neighbours who informed the brothers of the Deceased of the same. The brothers thereafter reported the matter to the police who tracked down the Accused at Muchorwe Shopping Centre. Upon interrogation, the Accused confessed to having killed the Deceased after a misunderstanding leading to him striking her on the head. The Deceased collapsed and died.

The Accused further stated he carried the body of the Deceased to Baraget Forest within Kuresoi where he buried her in a shallow grave. He then voluntarily led the officers to the grave, where her body was exhumed which was 600meters from his home. The Accused was a charcoal seller and had used one of the holes he used to prepare charcoal as a grave. He covered it with soil and tree branched to avoid suspicion.

4. The DPP was unable to trace the family of the victim for a Victim Impact Statement. While submitting that the Accused Person is a first offender, however, Ms. Mumbe, the DPP, urged the Court to give a stiff custodial sentence. She pointed to three aggravating factors:

- a. First, that the Accused Person had a history of attacking the Deceased;
- b. Second, that the attack was on the head – a sensitive body part – which the Accused Person ought to have known was likely to result in death;
- c. Third, that the Accused Person went ahead to hide the body in a shallow grave where it remained until after three years when he led the Police to the site.

5. The DPP recommended a sentence of twenty (20) years imprisonment.

6. On the Accused Person’s behalf, Mr. Wambeyi – his Counsel -- informed the Court that the Accused Person is relatively young at 37 who had two young children from his union with the Deceased. He also has two other children from a previous marriage.

7. Mr. Wambeyi submitted that the act of the Accused Person that led to the death of the Deceased was not intentional or premeditated; and that the Accused Person is deeply remorseful for what happened.

8. Mr. Wambeyi requested for a non-custodial sentence. He submitted that the Accused Person deserved a second chance in life and a non-custodial sentence will give him that chance. He asked the Court to take into consideration that the Accused Person accepted a plea agreement hence saving the Court precious judicial time and the family the trauma of testifying. Mr. Wambeyi begged the Court to extend “its hand of mercy” and give a lenient sentence.

9. Sentencing is an individualized process where I am required to consider all the mitigating and aggravating circumstances as applied to the specific circumstances of the case in order to fashion an appropriate sentence that is fit to the offence and circumstances. I have considered the following three mitigating factors.

10. *First*, the offender pleaded guilty in a timely manner and spared the family the stress and trauma of testifying.

11. *Second*, the Accused Person is a first offender.

12. *Third*, the Accused Person expressed remorse. He has sought forgiveness from his family.

13. These mitigating factors must be balanced to arrive at an appropriate sentence. As Ms. Mumbe pointed out, there are two glaring aggravating factors that must be considered. The first one is the egregious post-offence conduct of the Accused Person. He went to great lengths to hide his crime – carrying the body to the forest; digging a shallow grave; and covering it with tree cuttings and leaves. The Accused Person’s conduct in this regard attracts outrage and opprobrium which must be translated into a proportionate sentence.

14. *Second*, the Accused Person had a history of assaulting the Deceased. Indeed, he did it with such regularity that when the incident happened the neighbours were afraid to intervene – afraid of the Accused Person’s violent disposition.

15. Looking at the circumstances in totality, I am persuaded that incarceration is the only suitable way of expressing society’s condemnation of the Accused Person’s conduct or deter similar conduct in the future.

16. Consequently, in my view, a fit sentence that properly balances the mitigating circumstances with the aggravating circumstances is a sentence of seven years imprisonment. Accordingly, I sentence the Accused Person to seven years imprisonment. Since the Accused Person has been in custody since his date of arrest, the term of imprisonment shall be computed starting on the day the Accused Person was first presented to this Court to take plea, that is, on 02/09/2019.

17. Orders accordingly.

DATED AND DELIVERED AT NAKURU THIS 7TH DAY OF OCTOBER, 2021

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JOEL NGUGI

JUDGE

NOTE: This judgment was delivered by video-conference pursuant to various Practice Directives by the Honourable Chief Justice authorizing the appropriate use of technology to conduct proceedings and deliver judgments in response to the COVID-19 Pandemic.