



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

CRIMINAL CASE NO 14 OF 2018

REPUBLIC.....PROSECUTOR

-VERSUS-

GEORGE KAMAU KINYANJUI.....ACCUSED

SENTENCING

1. **George Kamau Kinyanjui** was initially charged with the offence of murder Contrary to Section 203 as read with Section 204 of the Penal Code.
2. Particulars of the information were, that, on the night of 14th August 2018 and the morning of 15th August 2018, at Imbirkani shopping centre in Loitokitok Sub-County, within Kajiado County, he murdered Haron Musau.
3. The accused pleaded not guilty to the information. He later entered into negotiation with the Office of the Director of Public Prosecutions for plea bargain that is allowed under section 137A of the Criminal Procedure Code, which led to an agreement. The court explained to the accused the essence of the plea bargain and the resultant agreement, and in particular, the fact that he would waive his rights to be tried, including the duty of the prosecution to prove its case against him as required by law. The court further explained to the accused that if convicted on the basis of the plea bargain, he would not be entitled to appeal against conviction. The court was satisfied that the accused understood the nature of the agreement he was entering into.
4. The court then perused the plea bargain agreement and being satisfied that the accused was entering into the plea bargain voluntarily, and understood his rights, allowed the plea bargain and the accused pleaded guilty to a lesser offence of manslaughter. Facts were then read to him and he admitted them. He was therefore convicted for manslaughter on his own plea of guilty, hence this sentencing.
5. The facts of this case are that on the night of 14th August 2018 the accused and the deceased were having a good time at a bar called Manyatta. After the bar closed, they decided to escort ladies, bar attendants, to their house. On the way, the accused started to seduce the deceased's girlfriend. An altercation ensued leading to a fight between the two. The accused hit the deceased several times with a club. Meanwhile, the ladies ran away to a house and left the two fighting.
6. After sometime, the deceased screamed and requested his girlfriend to bring him drinking water. When the lady brought him water she heard the deceased say that he was going to report the matter to the police. On hearing this, the accused started beating the deceased again saying this would make him file a proper report.
7. The following day, the deceased was found lying down. He was taken to Loitokitok Hospital for treatment. He died on 18th August 2018. A post mortem was conducted and the cause of death determined to have been subdural haematoma due to blunt trauma.
8. In mitigation, Mr. Oyunge, learned counsel for the accused submitted, that the accused is remorseful for what happened given that the accused and the deceased were friends. He submitted that the accused has a young family and he is the sole bread winner. He further submitted that both the accused and deceased were drunk at the time, and that the death was unfortunate and unintended.
9. According to counsel, the accused has reflected on what happened, is remorseful and he is trying to come to terms with what he did. He urged the court to give the accused a second chance and impose a non-custodial sentence.
10. Mr. Njeru Learned Assistant Deputy Prosecution counsel, submitted that although the accused is a first offender, the court should take into account the rights of the victim's family. He urged the court to impose a custodial sentence.
11. I have considered the facts of this case and the circumstances under which the offence was committed. I have also considered the

mitigation on behalf of both the accused and the victim's family.

12. The deceased and the accused were friends. They were certainly having good time in the company of ladies who were known to them. They were escorting the ladies to their house when a misunderstanding arose leading to a fight. As a result the unfortunate death occurred. The ladies ran away but

13. when one of them brought drinking water for the deceased, the deceased indicated that he would report the matter to the police. This made the accused once again start beating the deceased with the club. The act obviously aggravated the situation causing serious injuries to the deceased. He died about 3 days later. The cause of death was due to the injuries inflicted on him by the accused.

14. The prosecution states that although the accused is a first offender, custodial sentence would be appropriate in order to do justice for the victim's family. The accused's counsel on his part prayed for a non- custodial sentence.

15. I have considered the mitigation and the fact that the two were drunk when the fight broke out. It was spontaneous as opposed to a premeditated act. In matters of this nature, the court should consider the circumstances of the case as well as do justice of the case. This is because the purpose of sentencing in criminal justice system, is not only to punish the offender but also help the offender appreciate that one has to pay to the crimes they commit and thereby reform.

16. The deceased and accused were friends. The incident occurred purely from what would appear to have been a small misunderstanding, but filled with suspicion. It exploded that fateful night leading to the unfortunate killing of the deceased. The accused is said to have repeatedly hit the deceased with a club. He then left him bleeding in the dead of the night and went away. He did not mind about what would happen to his victim despite the injuries he had inflicted on him. He did not even consider taking him to hospital for treatment. He left him to his fate.

17. This is not how one should have behaved towards his friend. Despite the disagreements for whatever the cause, the accused should have tried to assist the deceased get medical treatment instead leaving him bleeding. Although the accused is a first offender his behaviour was deplorable. It is not excusable.

18. Regarding sentence, section 205 of the Penal Code provides that any person who commits the felony of manslaughter is liable to imprisonment for life. However, this is the maximum sentence and, therefore, the sentence to met out is at the discretion of the court, taking into account the circumstances of each case, including any aggravating or mitigating factors.

19. Taking into consideration the facts of this case and the circumstances leading to the commission of the offence, as well as the mitigation on behalf of the accused and the sentiments made on behalf of the victim's family, it is the view of the court that the accused's behaviour calls for a custodial sentence. That way, the court balances the scales of justice to serve society and the accused by punishing him for the offence he committed

20. Consequently the accused is hereby sentenced to six years imprisonment. The sentence to run from 14th September 2018, the day he was first produced in court. Right of appeal on sentence explained to the accused.

Dated, Signed and Delivered at Kajiado this 7th day of February 2020.

E. C. MWITA

JUDGE