



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL CASE NO 8 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**PETER MUKUHA MBAL.....ACCUSED**

**SENTENCE**

1. The convict was initially charged with the offence of murder contrary to section 203 as read with section 204 of the penal code to which he pleaded not guilty.
2. By a Plea Bargain Agreement entered into between the convict and the State dated 19<sup>th</sup> June 2019 which was recorded and accepted by the court on 16/7/2019 the said charges were reduced to manslaughter contrary to section 202 as read with sections 205 of the penal code to which the convict pleaded guilty and was convicted on his own plea of guilty.
3. The facts to which the convicted pleaded to were that the deceased was the son of the convict. On 29<sup>th</sup> day of January 2019, the convict and the deceased were quarreling over ancestral land which dispute had been ongoing over a long period of time. The convict went into his house and took a kitchen knife which he returned with to the scene and stabbed the deceased on his left side of chest. The deceased died while on the way to Hospital. The post mortem report prepared on the deceased by Dr. Kaburu dated 3/2/2017 confirmed the cause of death to be hemorrhagic shock due to sharp trauma due to assault.
4. Upon conviction, the court in compliance with the sentencing policy guidelines called for presentencing report and allowed the convict to mitigate and invited the prosecutor to address court on the issue of sentence.

**PRE SENTENCING REPORT**

5. It was stated that at the time of the offence the convict was a casual laborer within Waitthaka village, single and a member of Full Gospel church.

**CIRCUMSTANCES OF THE OFFENCE:-**

The convict stated that the deceased who was his uncle got him on the road and started talking him down on how he was supposed to follow his instructions in the presence of his son, a scuffle erupted and the deceased and his son started to beat him up knocking out one of his teeth. In self defence he stabbed the deceased who died while being rushed to the hospital.

**ATTITUDE TOWARDS THE OFFENCE:-**

The convict was remorseful about the whole event and regretted causing the death which was not intentional. As a show of his regret, he never ran away from the scene and therefore pleaded to be given a second chance in life.

**CONVICT'S FAMILY VIEWS:-**

The mother stated that the convict was known to abuse alcohol and would be violent while under influence. The mother stated that there was an incidence when he chased her while armed with an axe and another incidence when he wanted to kill his own sister and her young child. It was however noted that the mother had at first interview stated that the convict was a peace loving person with a pleasant social character

only to change her story weeks later.

### **DECEASED FAMILY VIEWS:-**

The deceased was a father of five young children and the only breadwinner of his family. The children education was stated to be hanging on balance as the wife could hardly make ends meet. The family was living in constant fear and were contemplating moving out of their home due to open hostility exhibited by the convict's family. The wife of the deceased stated that the underlying cause of the murder was an attempt by the convict's mother and the deceased sister to sell a plot belonging to the deceased which was a subject of Nairobi High court **Civil Case No 1578 of 2012**. The wife expressed her reservations for not being involved in the plea bargain Agreement.

### **COMMUNITY VIEWS:-**

There are those members of the community who feel that it was the deceased who provoked the convict while under the influence of alcohol while there are other members of the community who described the convict as a person with antisocial behavior who abused alcohol and drugs. He was cited for cases of petty thefts, defilement of his sister and threat to his brother. They were against the convict being placed on probation.

### **CONCLUSION**

It was stated that the deceased and the convict's family were at loggerhead over a piece of land claimed by the deceased family and the social environment was not ripe for possible reconciliation. It was therefore stated that it was a challenge for community rehabilitation due to the convict's high risk of reoffending, given his past violent attitude and abuse of alcohol.

### **MITIGATION**

6. In mitigation, Mr. Mathenge stated that the convict was remorseful and had learned a lesson during the two years he had been in custody. He was 39 years old who desired to engage in meaningful task, it was stated that the same did not have any previous record and therefore the reservation by the family of the deceased and the community did not mean that the court can not grant non- custodial sentence.

7. Mr. Okeyo for the State confirmed that he had not been supplied with any previous records of the convict, who should therefore be treated as a first offender. He submitted that the presentencing report supported custodial sentence.

### **DETERMINATION**

8. Sentencing objectives as per the sentencing policy guidelines are:

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/her 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.*
5. **Community protection:** *to protect the community by incapacitating the offender.*
6. **Denunciation:** *to communicate the community's condemnation of the criminal conduct.*

9. From the judicial decisions, the following factors must be taken into consideration as sentencing principles:- The sentence must be no more severe than is necessary to meet the purposes of sentencing. The overall punishment must be proportionate to the gravity of the offending behavior, similar offences committed by offenders in similar circumstances must attract similar sentence and the overall sentence must be just and appropriate in light of the overall offending behavior.

10. While weighing on the nature of gravity of the offence, the court must take into account the intension of the offender, the consequences of the offence, the nature of the weapon used and the offender's history of the offending.

11. In this cause, the offender was related to the victim and as a result of the death, the relationship between the two families have been totally affected and the possibility of its restoration is very low. The offender as per the pre-sentencing report is not a candidate for community rehabilitation due to the hostile home environment and his high risk of reoffending, given his past violent nature.

12. This therefore leaves the court with only option of custody rehabilitation. In the case of **R Vs DAVID MWIKARI MUTISO & ANOTHER [2017] eKLR**, Nyakundi J had this to say:-

**“I do not consider your case to fall among those few demanding for the maximum penalty as provided for under section 205 of the penal code. The starting point in determining the appropriate custodial sentence for this offence is to consider whether there are any aggravating factors. The deceased was a young man aged about 24 years, his life was prematurely terminated**

by your unlawful act of inflicting serious bodily harm ...

**In this regard, I give weight to the nature of the offence and the aggravating factors which supports the emphasis reinforcing the length of custodial sentence. I am satisfied that in all the circumstances of this case overall interests in the matter. I sentence you to ten (10) years imprisonment.”**

13. I have taken into account the fact that the convict have entered into a plea bargain with the prosecutor, his past conduct and the fact that the offence was caused as a result of a land dispute and further the fact that the same has been in remand custody for the past three years and hereby sentence the same to serve a seven (7) years imprisonment from 14<sup>th</sup> February, 2017 and it is hereby ordered.

**Dated, signed and delivered at Nairobi this 21<sup>st</sup> day of May, 2020 through Google Teams.**

.....

**J. WAKIAGA**

**JUDGE**

**In the presence of**

Ms. Onunga for the State

Mr. Kihoro for the accused

Karwitha/Court Assistant

Accused person present