

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CORAM: D. K. KEMEI - J

CRIMINAL CASE NO. 26 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

MICHAEL MUTISO MUNYOKI.....ACCUSED

RULING ON SENTENCE

The accused herein **Michael Mutiso Munyoki** is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 27th day of July, 2012 at Mlolongo Township in Athi River District within Machakos County he murdered **Alex Musyoki**. Vide the judgement dated 29/01/2020 the accused was convicted for a lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.

Vide the judgement of this court dated 29/01/2020 the accused was found guilty of an offence of manslaughter contrary to Section 202 as read with Section 205 of the Criminal Procedure Code. The accused having been found guilty as such then he is subject to the mandatory sentence of life imprisonment.

Learned counsel for the prosecution submitted that the accused is a first offender.

Learned counsel Mr. J. N. Kimeu for the accused submitted that the accused is aged about 30 years old and unmarried and who used to be relied upon by his aged parents. It was further submitted that the accused has been in custody since 2012 and that he is deeply remorseful. Finally, it was submitted that this court do consider the circumstances of the case in which the accused was acting in self defence. Counsel added that the accused has learnt his lesson while in custody and that he be given a non-custodial sentence since the pre-sentence report is favourable.

This court called for a pre-sentence report. The same was duly filed and it is dated 5/02/2020. The family of the accused are receptive and willing to assist him settle down in the event he is released. The report also revealed that he has good ties with his community. The family is reported to be ready for reconciliation and or compensation with the deceased's family according to Kamba customs. Indeed, the report confirms that the victim's family are ready for reconciliation and any overtures from the family of the accused. The local administration confirmed that they had no adverse report on the accused regarding any criminal activities in the area and that he is not a threat to the community and that his security is guaranteed if he is allowed back into the community as he is not a danger to them. The Probation Officer pointed out that the accused will require some counselling on anger management, self-control and alternative dispute resolution.

The offence of manslaughter is punishable by the maximum penalty of life imprisonment under Section 205 of the Penal Code. However, this only represent the maximum sentence usually reserved for the extreme and worst case scenario. In the present case the accused is noted to be a first offender and that the pre-sentence report is favourable. Hence I do not consider this case to be one falling in the category of the most extreme cases of manslaughter. In the premises, I am inclined not to prefer a sentence of life imprisonment.

Sentencing is always at the discretion of the trial judge as he or she has the opportunity to watch the matter proceeding and to note the behaviour of the witnesses. This discretion ought to be exercised judiciously. This court duly noted all the essential features that cropped up during the trial and which have been analyzed in the judgement. The key issue which emerged is that the bone of contention between the accused and the deceased was a certain woman that both of them desired. It seems the said woman had been double dealing them and this erupted into the open when the two met on the material date and which led to a scuffle resulting in the death of the deceased herein. It would seem to me that this was a fight over the love of the mysterious woman who apparently was not at the scene of crime. Hence I find that this was a perfect crime of passion.

Various courts have passed different sentences for the offence of manslaughter depending on the circumstances of each case. For instance, in the case of **VMK –vs- Republic [2015] eKLR** a sentence of ten (10) years' imprisonment was imposed for manslaughter. In the case of **Republic –vs- Daniel Okello Rapuch [2017] eKLR** a sentence of 12 months' imprisonment was meted out on a man who killed another on allegation of being involved in an illicit love affair with his girlfriend. Again in the case of **Republic –vs- Ismail Hussein Ibrahim [2018] eKLR** the court acquitted the accused in lieu of having him charged with a lesser offence of manslaughter as he was acting in self defence.

I have considered all the submissions and the pre-sentence report. The incident though tragic had resulted from the actions of the accused and deceased brawling over a certain woman who was the object of their desires. It is common knowledge that many men have lost their lives due to fights related to love triangles. These fights are needless since they often lead to loss of life. However, emotionally and mentally disturbed a man is over matters of the heart (love), it serves no purpose to end the life of another person. The brawl herein led to the loss of life which was quite unnecessary. The lost life must be atoned. It is noted that the accused has been in custody since his arrest on the 27/07/2012 which is about eight (8) years. I am satisfied that he has somewhat atoned for his sins. I am of the view that further incarceration is not appropriate in the circumstances. The pre-sentence report is favourable for a non-custodial sentence. This merits for an

order that he serves under probation for some period so as to enable the concerned department monitor his conduct upon release from custody. Consequently, I order the accused to serve under probation for a period of three (3) years under the close supervision of the Machakos County Probation Officer.

Orders accordingly.

Dated and delivered at **Machakos** this **12th** day of **May, 2020**.

D. K. Kemei

Judge