



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CRIMINAL CASE NO. 27 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

KIPKOGEI RUTTO.....ACCUSED

SENTENCE

1. The accused was on the 1/7/2016 charged with the **offence of Murder of one Kipruto Arusei Contrary to Section 203 as read with Section 204 of Penal Code.**

He pleaded not guilty and the case proceeded to hearing. The prosecution called four witnesses.

However in the cause of the hearing, a plea bargain agreement was entered into between the prosecution and the accused. The said plea agreement is dated **22/7/2019.**

2. On the same day the accused pleaded guilty to the lesser information/charge of manslaughter **Contrary of Section 202 a read with Section 205 of the Penal Code.** He further confirmed the truth of the facts as stated to him by the prosecution. He was given an opportunity to mitigate which he did by his advocate Nyakaga.

3. A social enquiry report on the accused was prepared prior to sentencing. It is dated **21st January 2020.** I have considered the said report.

4. **Section 202 of the Penal Code** defines the offence of manslaughter as

202 (1) any person who by an unlawful act causes the death of another person is guilty of the felony termed manslaughter.

Section 205 provides that any person who commits the felony of manslaughter is liable to imprisonment for life.

5. Before passing sentence the court ought to inform itself as to the proper sentence to be passed by taking into account the evidence, nature of the offence and circumstances prior to the commission of the offence as well as any mitigating factors.

6. The purposes and objectives of sentencing as stated in the **Supreme Court Petition No. 15 and 16 (Consolidated) of 2015 Francis Karioko Muruatetu & Another Vs. Republic (2017) e KLR** are:

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

2. Deterrence – to enable the offender from committing 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 damage and to promote a sense of responsibility through the offender contribution towards meeting the victim's needs.

5. Community Protection by incapacitating the offender.

6. Denunciation – to communicate to the community's condemnation of the Criminal conduct.

7. As stated in the **Muruatetu case (Supra)**, the following guidelines ought to be considered before sentencing.

- Age of offender.
- Being a first offender.
- Whether offender pleaded guilty.
- Character and record of the offender.
- Commission of the offence in response to gender-based violence.
- Remorsefulness of the offender.
- The possibility of reform and social re-adaptation of the offender.
- Any other factor that the court considers relevant.

8. I have taken into account the above factors as well as the pre sentence report aforesaid. The deceased is the father of the accused. He was born in 1986. At time of commission of the offence, he was 29 years old and had dropped out of school due to lack of school fees. He was a casual labourer within his community, and not known to have been indulging in alcohol drinking, or in the use of any hard drugs or smoking. He is a first offender, and said to be a humble person.

9. The circumstances under which the offence was committed point to the deceased who was drunk having tried to hurt and injure the accused using a bow and arrows following a quarrel. In an attempt to defend himself, the arrow stabbed the deceased leading to his death.

10. In his mitigation, the accused was remorseful stating that he did not intend to fatally injure his father (deceased) and requests what transpired on the fateful day. He pleaded for a lenient, non-custodial sentence.

11. By the pre sentence report, the family of both the deceased and the accused who is now 32 years old is ready and willing to forgive and accept the accused back into their family and the community, and have urged for a non-custodial sentence.

12. The area administrator too has no objection to the accused being released to the community due to his past good character.

Considering that the accused did not the court through a full trial by his agreement to plea bargain, the objectives stated in the Judiciary's Sentencing Policy and supported by court decisions, notably the **Supreme Court Petition commonly known as the Muruatetu Case, (Supra)**.

13. I come to the finding and conclusion that the accused has been punished adequately for the offence he has committed by custodial period of slightly over five years since his arrest and arraignment.

In my view, the detention thereof is sufficient to enable the accused desist from committing similar offences if released.

By his mitigation the accused is ready to desist from any criminal disposition and become a lawful binding citizen, as he was prior to the commission of the offence.

14. For the foregoing it is my opinion that a non-custodial sentence, which his family, the community and the area administration have recommended is appropriate upon taking all relevant factors into consideration.

15. I therefore, upon exercise of my judicial discretion, and upon all stated peculiar circumstances leading to the commission of the offence, sentence the accused to the period the accused has so far served in custody, which is shy of five years by 22 days.

Consequently, unless otherwise lawfully held, the accused is set at liberty forthwith.

It is so ordered.

Delivered, Signed and Dated at Nakuru this 6TH MAY, 2020.

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J.N. MULWA

HIGH COURT JUDGE.