



REPUBLIC OF KENYA

IN THE HIGH COURT OF KEANY AT NAKURU

CRIMINAL CASE NO. 114 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

DAVID KIBET TENGOYO.....ACCUSED

RULING

1. The Accused Person, David Kibet Tengoyo, faced a charge of murder contrary to section 203 as read together with section 204 of the Penal Code. He had been accused of killing, with premeditation, Kibet Kipnetich at Olkokwe Village in Mogotio Sub-County within Baringo County.

2. In a judgment dated 28/06/2018, Justice Maureen Odero convicted the Accused Person of the lesser but cognate crime of manslaughter. By the time of reading the judgment Justice Odero had been transferred out of the station leaving me to conduct the sentencing hearing.

3. Briefly, the facts as they emerge from the judgment are as follows. The Accused Person arrived home intoxicated on 09/11/2014. He started insulting his mother. The Deceased, who was the Accused Person's father, apprehensive that the Accused Person will turn violent towards the mother, got a sword to defend the mother. There was a history of hostile and violent behaviour by the Accused Person towards his parents. The Accused took the Deceased's stance as a challenge to duel. He attacked the Deceased. The Deceased responded by slapping the Accused Person on the face using the sword. The Accused Person, who was armed with a knife stabbed the Deceased on the left side. The Deceased fell down and died on the spot.

4. I called for a Pre-sentence (Social Enquiry) Report. It was quite unfavourable to the Accused Person. After detailing the troubled history of the Accused Person with both his parents and siblings, the Report ominously concludes:

All are still very angry with the Accused to the point [his] house was left to fall apart with them doing nothing to salvage whatever was inside and his land 4 acres lies desolate....they are urging the Court to ensure justice is done.

Their words were to let the Court make a final decision but issued veiled threats that they would know what to do if [the Accused] were to be released. The victim was well loved village elder that was respected by all and his untimely demise at the hands of the offender left a huge gap in the community. They are not yet willing to forgive and have said that they are not ready to receive him back home.

5. The Report has another consequential conclusion:

[The Accused Person] showed not remorse and his attitude is not positive when it comes to his actions. He has never asked for forgiveness from his family and has actually been shunned by them as they do not visit him in custody.

6. During the Sentencing hearing, I asked the Defence Counsel to respond to the Report. He thought the Report was "too harsh". He indicated that his client was actually remorseful. Pointing out that the Accused Person had no intention of killing his father, Mr. Bosire, Defence Counsel (appearing for Mr. Nyagaka), urged the Court to consider non-custodial sentence. He asked the Court to consider that the Accused Person has children and that his wife is deceased. Finally, Mr. Bosire told the Court that in the four years the Accused Person has been in custody he has learnt a lot.

7. When given an opportunity to address the Court, the Accused Person said that he is "okay" with "whatever the Court decides."

8. Mr. Chigiti, the State Counsel, cautioned against non-custodial sentence given the hostility on the ground. However, he told the Court that the Accused Person is a first offender.

9. I have considered all the presentations made at the sentencing hearing, the Pre-Sentence Report as well the circumstances in which the

offence was committed. I have, as recommended by the Pre-Sentence Report, concluded that a custodial sentence is warranted in this case given the completely ruptured relationships between the Accused Person and the community including his siblings. I accept the conclusions in the Report that the Accused Person has not done anything to repair those relationships.

10. As to the appropriate length of the sentence, the following factors are relevant. First, the circumstances of the homicide are an aggravating factor. Clearly, the Accused Person was the aggressor and went to great lengths to provoke the Deceased – including threatening to attack the Deceased’s wife and son (i.e. Accused Person’s mother and brother). Second, based on the conclusion in the Pre-Sentence report, my own observations of the Accused Person and his presentation in Court, I am not persuaded that the Accused Person is remorseful. Neither am I persuaded, as Defence Counsel suggested, that the Accused Person has spent the last four years reflecting on his actions. His attitude belies that suggestion.

11. I have considered that the Accused Person is a first offender and treated this as a mitigating factor.

12. Finally, I have considered that the Accused Person has been in custody since he was first arraigned – a period of about four years.

13. All considered, a fit sentence that properly balances the mitigating circumstances with the aggravating circumstances is a sentence of five (5) years imprisonment and I, accordingly, sentence the Accused Person to that period. For avoidance of doubt, the prison sentence will run from today.

14. Orders accordingly.

Dated and delivered at Nakuru this 17th day of January, 2019

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JOEL NGUGI

JUDGE