



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 128 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

EDWARD KIMUTAI NGETICH.....ACCUSED PERSON

SENTENCE

1. The Accused Person, Edward Kimutai Ng'etich , was convicted of the offence of murder vide a judgment dated 29/06/2018. He was found guilty of unlawfully, and with pre-meditation, killing Eric Kibet Kosgei on 19/12/2014.
2. The Accused Person pleaded not guilty and a fully-fledged trial ensued leading to his conviction.
3. The circumstances in which the offence was committed are contained in the judgment. Briefly, the Deceased and the Accused Person argued at a bar where the latter was drinking and the former had gone to buy cigarettes. The Deceased left the bar but the Accused Person followed him, threw a glass at him and the duel escalated from there. The Accused Person was then seen chasing the Deceased, cornering him and stabbing him in the chest. There is no question that the killing was pre-meditated.
4. During the sentencing hearing, Mr. Omutelema, State Counsel, informed the Court that the family of the Deceased was not desirous of addressing the Court. He informed that the Court that the Accused Person was a first offender. He had no view on the appropriate sentence.
5. The Accused Person, in mitigation, requested for non-custodial sentence. He expressed the wish to serve the community and his children. Padding the mitigation on his behalf, Mr. Magata, his Counsel, informed the Court that the Accused Person is 34 years old, and has a young family. The wife is not working and they have four children. Further, Mr. Magata informed the Court that the Accused Person is deeply remorseful.
6. I have carefully considered all the factors in his case on an individualized basis as I am required to do. I have considered the following four mitigating factors.
7. *First*, the Accused Person the Accused Person is a first offender.
8. *Second*, the Accused Person expressed remorse. I formed the opinion that he was sincere in his remorse.
9. *Third*, I have also considered the circumstances in which the offence was committed as a mitigating circumstance. While there was premeditation as defined by law, it is true that the homicide was not an act of wanton and senseless violence but was part of a confrontation between the Accused Person and the Deceased. The violence was spontaneous and was not planned over time and orchestrated. Further, the killing was not undertaken in any particularly heinous or depraved fashion.
10. I have not found any aggravating circumstances.
11. In this case, I have come to the conclusion that some measure of custodial sentence is merited as the only suitable way of expressing society's condemnation of the Accused Person's conduct or deter similar conduct in the future. Having considered all the mitigating circumstances and aggravating circumstances, and considering the four years the Accused Person has been in custody during the pendency of the trial as I am required to do under section 331 of the Penal Code, I am of the view that a sentence of ten years is the appropriate sentence. The ten years sentence will be served as follows:

a. Seven years will be served in custody commencing today; and

b. Three years will be served under probation commencing on the date the Accused Person will be released from custody.

12. Orders accordingly.

Dated and Delivered at Nakuru this 15th day of January, 2019

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JOEL NGUGI

JUDGE