

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NO.69 OF 2014

REPUBLIC.....STATE

VERSUS

PHILIP KIPLAGAT RONOACCUSED

SENTENCE RULING

1. The Accused Person, Philip Kiplagat Rono, is convicted of the murder of Nickson Kibiwott contrary to Section 203 as read with Section 204 of the Penal Code.
2. I delivered the judgment on 04/10/2018 finding the Accused Person culpable of the murder after a fully-fledged trial in which the Accused Person, when placed on his defence, exercised his constitutional right to remain silent.
3. The facts as they emerged from the evidence show that the Deceased and the Accused Person, who were acquaintances, met at a local beer joint and engaged in an argument which soon degenerated into a physical confrontation. The proprietor of the joint, together with other patrons separated the two and asked the Accused Person to leave the place as a way of keeping peace. The Accused Person left but only ephemerally. He returned and waited by the gate to the joint. There, he attacked the Deceased as he left the joint later that evening. He stabbed him on the neck with a knife and took off.
4. It was remarkable that during the sentencing hearing the Accused Person explained why he chose to remain silent during trial rather than testify in his defence. "The incident happened when were drinking. In our drunkenness, we quarrelled....", he said. "I have always admitted that I caused the death of the Deceased. That is why I remained silent instead of offering a defence..." He told the Court that he felt extremely provoked because the Deceased repeatedly called him a thief.
5. I found the Accused Person's attitude and disputational logic remarkable. Remarkably refreshing. Had he told the story he told during the sentence hearing, it is likely that the verdict would have been manslaughter rather than murder. But he considered it anathema to do so since he "knew" he had caused the death of the Deceased; hence his choice to remain silent.
6. In mitigation, he offered that he has had more than four years in custody to reflect. During that time, he said, he has come to know God. He is no longer the same person. He told the Court that he is remorseful for choosing to be provoked to act in anger and in violence. He told the Court that he has now reformed. He pleaded for leniency.
7. Mr. Magata asked the Court to credit the Accused Person for his honesty. He informed the Court that he is married with two children and that the wife left after the Accused had been taken into custody. He is still relatively youthful at 33 years old with a whole life ahead of him.
8. The State Counsel informed the Court that the family of the Deceased did not wish to address the Court but that the Accused Person should be treated as a first offender.
9. Given the circumstances in which the offence was committed, and the self-reflective stance the Accused Person has demonstrated; and given all the mitigating circumstances outlined above, my view is that a long prison sentence will not serve a very useful purpose in this instance. There was no specific intention to commit homicide; both the Accused Person and the Deceased were drunk; and had engaged in a physical fight.
10. **In the specific circumstances of this case, I have formed the opinion that a custodial sentence of seven years followed by a probationary sentence of two years will be sufficient sentence for this crime. In addition, the custodial sentence will begin running from the date when the Accused Person was first arraigned that is 04/06/2014 since he has been in custody since that time. The probationary period will follow immediately after he is released from Prison.**
11. Orders accordingly.

Dated and delivered in Nakuru this 15th day of January, 2019

JOEL NGUGI

JUDGE