

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO.2 OF 2018

STATE.....PROSECUTION

VERSUS

ANDREW RONO.....ACCUSED

RULING ON SENTENCE

1. The accused was 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 28th day of January 2018 at Lesirwa Location in Kipkelion Sub-county within Kericho County, he murdered Stanley Kipyegon Langat.

2. The accused pleaded not guilty to the offence and the case was set for trial. However, pursuant to a plea agreement dated 9th October 2018 entered into between him and the state, he pleaded guilty and was convicted on his own plea of guilty to the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code.

3. The facts of the case as presented by Mr. Ayodo, Learned Prosecution Counsel, were that on the material day at around 1800 hours, the accused and the deceased were drunk and were seen quarrelling as they approached the compound of one Lily Chepkorir. Suddenly, the accused person punched the deceased on the face, and the deceased fell down. On seeing them fight, Lily Chepkorir went and pleaded with them to stop fighting, and they stopped for a while.

4. After a few minutes, however, the accused person picked up a stone and hit the deceased on the chest, and the deceased fell down. The accused then ran away leaving the deceased lying on the ground.

5. Lily screamed for help from neighbours, and members of the public arrived at the scene and assisted in taking the deceased to Londiani Sub-county hospital, where he was pronounced dead on arrival.

6. A post mortem conducted at the Londiani Sub-county hospital by Dr. Collins Biwot established that the cause of death of the deceased was internal haemorrhage from liver rupture secondary to blunt force trauma on the liver.

7. The accused person later surrendered himself to Fort Ternan Police Station and was later charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The post mortem report prepared by Dr. Biwot was produced as exhibit 1.

8. The state indicated that it did not have any records in respect of the accused, and he could be treated as a first offender.

9. In mitigation on behalf of the accused, Learned Defence Counsel, Mr. Koske, stated that the accused is aged 36 years and is married with one wife and two children. He was a first offender and was remorseful and apologetic for the offence he committed. He had spent eight months in custody, had reflected on his life and had embraced Christianity and changed his character of drinking alcohol, which is what had caused him to commit the offence to which he had pleaded guilty. He was pleading for leniency and for a non-custodial sentence so that he could continue to take care of his family.

10. The court directed that a pre-sentencing report should be prepared and filed in court. In the report prepared by the Probation Office, Kericho, the Probation Officer notes that the accused was remorseful and regretted his actions that had led to the death of the deceased, who was his first cousin. He was well spoken of in the community and was a leader of the *Nyumba Kumi* initiative that checks general insecurity in the area. The Probation Officer recommends that the accused is placed on probation.

11. I have considered the mitigation offered on behalf of the accused, as well as the Probation Officer's report and the recommendations that she makes. I have also considered the circumstances under which the deceased lost his life. While the accused attributes his actions to alcohol consumption, I note that he was the aggressor. He hit the deceased, who fell down. They were separated, but the accused, after a while, took a stone and hit the deceased in the chest, rupturing his liver and leading to his death. I take the view that the death of the deceased was caused, one would say quite deliberately, by the accused. He picked up a stone and hit the deceased on the chest, heedless of the harm he may cause him, careless of the fact that one can suffer serious injury when hit with a stone on the chest. While he attributes his actions to alcohol, he knew that he had done wrong when he took to his heels after fatally injuring his cousin.

12. The accused has saved the court's time by his plea of guilty to the offence of manslaughter. He is said to be a leader in the community, well thought of, charged with the responsibility of dealing with general insecurity in his home area. He knew or ought to have known the value of human life, and that one should not act in a manner that will jeopardise life. In the circumstances, I believe that he merits a custodial sentence, to reflect on and begin to value human life.

13. Accordingly, I hereby sentence him to ten (10) years imprisonment. He has a right of appeal against sentence within 14 days.

Dated Delivered and Signed at Kericho this 6th day of February 2019

MUMBI NGUGI

JUDGE