



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NO 60 OF 2007

REPUBLIC.....PROSECUTOR

VERSUS

MOSES KENU OLE PEMBA.....ACCUSED

RULING SENTENCE

1. Moses Kenu Ole Pemba (“Accused Person”) was originally charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He was accused of killing, with premeditation, Pauline Wahu Wachira, on 16/06/2007 at Sher Agencies (K) Ltd Company Longonot Staff quarters in Hellsgate location, Naivasha District within Rift Valley Province.
2. The Accused Person pleaded not guilty to the charge of murder and trial commenced. The Prosecution called twelve witnesses and closed its case. At that point, the parties negotiated a plea agreement.
3. By a Plea Agreement dated 22/05/2018, the Accused Person pleaded guilty to the charge of manslaughter contrary to section 202 as read together with section 205 of the Penal Code. After due caution, and after satisfying myself that the Plea Agreement was entered into knowingly and voluntarily, I recorded a conviction and called for pre-sentencing report and victim impact statements (if desired) and set the case for a sentencing hearing.
4. The agreed facts of the case are laid out in the Plea Agreement as follows:

That on the 16th day of June, 2007 at Sher Agencies (K) Ltd Company, Longonot Staff quarters in Hellsgate location, Naivasha District the Accused went to visit his wife (deceased) at her place resident who was the employee of Sher Agencies (K) Ltd on the material date at about 4pm. When the deceased saw the Accused in her house, she started shouting at the Accused that he had gone there to spy if there was other man by the name Mburu in the house, Mburu was a colleague to the Deceased since the Accused had knowledge the Deceased had started extra marital affairs.

The Accused tried to calm the Deceased down as he asked the Deceased to give him water to drink. The Deceased gave him water but continued shouting and abusing at him saying that she was free to sleep with Mr. Mburu as she was no longer his wife.

A quarrel ensued between the Accused and the Deceased which resulted a fight between the two, at the juncture the Accused drew his Maasai sword and cut the Deceased on the head. The Accused left the scene to go to hospital for treatment at Naivasha District Hospital, he was arrested at the hospital while undergoing treatment that was the time he learnt the Deceased had died. The investigation was commenced and found that the Accused committed the offence and therefore was charged with murder which has now been substitute with manslaughter. A postmortem was conducted on the body of the Deceased at Naivasha District Hospital which revealed the cause of death. The postmortem report Exhibit 1.

5. In mitigation, the Defence pointed out the Accused Person is extremely remorseful; and that he had taken steps to reconcile with the family of the Deceased. The Accused Person was in custody for eight years before he was released on bail.
6. The father of the Deceased also addressed Court on behalf of the family of the victim. His name is Paul Tuwei. He told the Court under oath that as a family, they sat and agreed that the time the Accused Person was in custody was enough to atone for the “mistake” he did. As a family, they have agreed to forgive him. He pleaded with the Court not to give him any more custodial time.
7. The Accused Person also begged the Court for forgiveness. He stated that he was remorseful and asked that the Court considers that he was in custody for 5 years and 5 months: he was arrested on 16/6/2007 and remained in custody until 11/12/2012. The Accused Person told the Court that he was able to use his time in custody to reflect on his life and learn new skills. He has learnt anger management, he said. And while in custody he went to school and did his KCPE Examinations. He pleaded with the Court to be given a non-custodial sentence.
8. Mr. Chigiti, the Prosecutor, confirmed that the Accused Person is a first offender. He told the Court that in view of the sentiments of the

father to the Deceased and the remorse expressed by the Accused Person, the Prosecution requests that the Court considers the time served as sufficient.

9. I have considered the following relevant factors in fashioning an appropriate sentence for the Accused Person in this case:

- a) The Accused Person pleaded guilty to the reduced charge of manslaughter and therefore saved the family the anguish of having to testify and also saved much judicial time.
- b) The Accused Person appeared to be genuinely remorseful.
- c) The family of the victim has expressed a strong wish that the Accused Person be committed to non-custodial sentence.
- d) The Accused Person is a first offender.
- e) The Probation Report is quite favourable and recommends non-custodial sentence which, it says, will provide an opportunity for the Accused Person to be rehabilitated.
- f) The circumstances of the crime do not point to a particularly well-planned, depraved, or violent conduct on the part of the Accused Person which should attract societal opprobrium or disapproval in the form of a prison sentence.
- g) The Accused Person was in custody for almost six years during the pendency of his case; and
- h) The Accused Person appears to have taken the opportunity of being in custody positively and used it to reform and better his skills. As such his capacity for reform is high.

10. Given all these factors, I have concluded that the time the Accused Person was in custody is enough custodial sentence. I have taken the sentiments of the victim's family as well as the Probation Report seriously in coming to the conclusion that only a short probation period is warranted in the circumstances. I, therefore, sentence the Accused Person to serve a Probation Sentence for a period of two years.

11. Orders accordingly.

Dated and Delivered at Nakuru this 7th day of March, 2019.

JOEL NGUGI

JUDGE