

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 42 OF 2012

REPUBLIC.....DPP

VERSUS

SIMON MUSAMBAI NAMAN.....ACCUSED

RULING

1. The accused herein was convicted on 29th May 2018 by Sitati J. of the murder of his mother, Hellen Mboka Naman. On the same date the court called for a psycho-social report to be prepared on the accused upon assessment by state social workers. Such a report has been prepared, dated 9th November 2018, and was placed on record on 12th November 2018. The matter was thereafter fixed for mitigation, which happened on 7th March 2018.

2. The report of 9th November 2018 is not favourable on the accused person. It depicts him as a person who is unruly and disrespectful, and who got on poorly with the deceased and with his siblings. His conduct is described by the family as irrational and criminal. The local administration is said to have described him as a troublesome individual. He does not appear to have been engaged in any serious gainful employment, and there is a suggestion that he might have been previously jailed for malicious damage to property where the deceased was the complainant. After the killing of the deceased, the accused person's home was completely destroyed by the community, which is said to have had poor ties with him due to his alleged criminal activity. The family and community are said to be still seething with bitterness and harm would no doubt be visited on the accused were he to be put on noncustodial sentence. The family and community view is that the traditional penalty for the conduct that the accused was convicted of is ex-communication and the cutting of links with the offender. A custodial sentence is accordingly recommended.

3. At mitigation, the accused, through his advocate, Mr Khayumbi, pleaded that he was a family man who has been in custody since 2012. He is said to be a mason who had worked for several years in a number of what were described as reputable firms. He pleaded that he had skills that were being wasted. He regretted what had happened and expressed that he had learnt his lesson. He pleaded that although the offence was serious, the court should consider sentencing him to the period he has been in custody so that he can be freed to go and avail his skills to society and help his children. Mr Ngetich for the state left the matter to the court.

4. To determine the most appropriate sentence for the offence the accused is convicted of, I am required to consider the circumstances surrounding the commission of the offence and the circumstances of the victim and of the accused. In particular, I must pay attention to both aggravating and mitigating circumstances.

5. With regard to the aggravating circumstances, I have noted that the offence was committed with a lethal weapon, an axe. I note too that the victim was a defenceless elderly woman, attacked as she went about her everyday menial chores. I note too that there might have been some grudge behind it which prompted the premeditated attack. On mitigation, I note that there was no degree of provocation by the deceased. The accused pleads remorse, and willingness to offer his masonry skills to the community.

6. I am alive to the principles of sentencing, which require me to impose a sentence that is proportionate to the offending behaviour, as weighed against its impact and the responsibility of the accused. I am also conscious about equality or uniformity or parity or impartiality in sentencing so that similar sentences are awarded for similar offences committed under similar circumstances. I must also respect human rights and fundamental freedoms, and adhere to domestic and international and regional standards on sentencing.

7. I note that the offence committed was serious, a person lost their life in circumstances that were not justified. The psycho-social report is not favourable to the accused. The sentence that the circumstances call for should be deterrent for offences that are committed in such a senseless manner as the instant one, to teach a lesson to both the accused and the community that crime does not pay. I shall accordingly sentence the accused to serve forty (40) years in prison. There is a right of appeal to the Court of Appeal within fourteen (14) days.

DELIVERED DATED AND SIGNED AT KAKAMEGA THIS 10TH DAY OF APRIL, 2019

W MUSYOKA

JUDGE