



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CRIMINAL CASE NO. 64 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

EVANS MUSIOMA BICHANGA.....ACCUSED

SENTENCE

1. The accused Evans Musioma Bichanga was on the 5th December 2016 charged with the offence of Murder of one Nicholas Ombega Bichanga contrary to Section 203 as read with Section 204 of the Penal Code.

He pleaded not guilty and the case proceeded to hearing. The prosecution called three witnesses.

However in the course of the hearing, a plea bargain agreement was entered into between the prosecution and the accused.

2. The accused is son of the deceased. On the 5th December 2018 he pleaded guilty to the lesser information/charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.

He was given an opportunity to mitigate on the 20th February 2019 which he did by his advocate M. Ngamate holding brief for Mr. Acholla Advocate.

3. A social enquiry report on the accused was prepared prior to sentencing. It is dated 31st January 2019.

4. **Section 202** of the Penal Code defines the offence of manslaughter as

202(1) Any person who by an unlawful act or causes the death of another person is guilty of the felony termed manslaughter.

Section 205 of the Penal Code states that any person who commits the felony of manslaughter is liable to imprisonment for life.

5. Before passing sentence the court ought to inform itself as to the proper sentence to be passed by taking into account the evidence, nature of the offence and circumstances of the case, as well as any mitigating factors.

6. The purposes and objectives of sentencing as stated in the **Supreme Court Petition No. 15 and 16 (Consolidated) of 2015 Francis Karioko Muruatetu & Another –vs- Republic (2017) e KLR** are:

(1) **Retribution** - to punish the offender for his/her criminal conduct in a just manner.

(2) **Deterrence**– to enable the offender from committing similar offence subsequently as well as to discourage other people from committing similar offences.

(3) **Rehabilitation** - to enable the offender reform from his criminal disposition and become a law abiding person.

(4) **Restorative justice** – to address the needs arising from the criminal conduct such as loss and damage and to promote a sense of responsibility through the offender contribution towards meeting the victims needs.

(5) **Community protection** by incapacitating the offender.

(6) **Denunciation** – to communicate to the community's condemnation of the Criminal conduct.

7. As stated in the **Muruatetu case** (Supra), the following guidelines ought to be considered before sentencing.

- Age of the offender
- Being a first offender
- Whether offender pleaded guilty
- Character and record of the offender
- Commission of the offence in response to gender-based violence
- Remorsefulness of the offender
- The possibility of reform and social re-adaptation of the offender
- Any other factor that the court considers relevant.

8. I have taken into account the above factors as well as the social enquiry pre-sentencing report.

The accused committed the offence at the young age of 20 years. He is married and has a 12 year old daughter. His wife left him.

He says he is remorseful and has reformed.

I have also taken into account that the accused has been in custody since November 2015. He is now 24 years old. By the social-enquiry report, the community is not yet ready to receive him back though his immediate family has forgiven him for killing their father without any provocation.

9. For the foregoing, a non custodial sentence would not be appropriate at this point in time.

I therefore proceed to sentence the accused to serve ten years imprisonment from the date of this sentence.

10. The accused has a right of appeal within 14 days.

Dated, signed and delivered this 3RD Day of April 2019.

J.N.MULWA

JUDGE