



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CRIMINAL CASE NO. 26 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**WS.....ACCUSED**

**RULING**

1. The subject herein was charged with the offence of murder contrary to Section 203 as read with Section 204 of the penal code. A plea agreement was entered into between the prosecution and the defence wherein the subject admitted a charge of manslaughter contrary to Section 202 as read with Section 204 of the Penal Code and was convicted accordingly.
2. The prosecution reported that they did not have previous record for the subject and therefore that he could be treated as a first offender. The advocate for the subject, **Mr. Osango**, mitigated on behalf of the subject that he was aged 17 years old when the offence was committed. That the deceased was his relative. That he did not have intention to kill him but that it is the deceased who provoked him and he acted in self defence. That the subject is remorseful for committing the offence. That he has been in custody since 2017 and has thus learnt a lesson.
3. The facts of the case are that the subject is a nephew to the deceased. That the deceased and the subject were living at the home of the deceased's father who was grandfather to the subject. That on the 20/9/2017 at 8 pm the subject was at home when the deceased returned home while drunk. After a while the deceased complained to the subject that he was flashing a torch to his face. A confrontation ensued. The subject ran to seek refuge into the house of his grandfather. The deceased followed him there. They had a brief struggle. The subject picked a wooden stick and hit the deceased once on the head. The grandparents separated them and raised alarm. Villagers went there. The deceased had already died. Irate members of the public beat up the subject. He was saved by a village elder. Policemen were called and took the subject into custody. The body was taken to Mbale Hospital Mortuary.
4. On 26/7/17 a doctor performed a post mortem on the body at Mbale Hospital mortuary. He found it with a deep laceration on the scalp. He formed the opinion that the cause of death was due to severe head injury from blunt force trauma following assault.
5. The court called for a pre-sentencing report. A comprehensive report was prepared by a probation officer, Kevin Buluma Adeti. The report indicated that the subject was born in the year 2001. That his parents were separated. He went to primary school in Nairobi where his mother was working as a house girl. After doing his class 8 examination he was brought to his grandfather's home in Hamisi, Vihiga County to proceed with secondary school education. He was in form 2 when the incident happened.
6. The report indicates that the family of the deceased has accepted the loss and are willing to support the subject. That they are of the opinion that the court should be lenient to the subject since his stay in remand is enough lesson to warrant him change into a better person.
7. In **Ambani Vs Republic**, the High Court stated that a sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that the court should look at the facts and the circumstances of the case in its entirety before settling for any given sentence.
8. The Court of Appeal **Thomas Mwambu Wenyi Vs Republic (2017) eKLR** cited the decision of the Supreme Court of India in **Alister Anthony Pereira Vs State of Mahareshra** at paragraph 70-71 where the court held the following on sentencing:-

**“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of**

**the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.**

9. In **Francis Karioko Muruatetu & Another –Vs- Republic (Supra)** the Supreme Court stated the following guidelines as mitigating factors in a re-hearing sentence for the conviction of a murder charge:-

- (a) age of the offender;**
- (b) being a first offender;**
- (c) whether the offender pleaded guilty;**
- (d) character and record of the offender;**
- (e) commission of the offence in response to gender-based violence;**
- (f) remorsefulness of the offender;**
- (g) the possibility of reform and social re-adaptation of the offender and**
- (h) any other factor that the court considers relevant.**

These factors are also applicable in a sentencing for the offence of manslaughter.

10. I have considered the above stated principles of sentencing. The subject was a minor when he committed the offence. The offence was committed in self defence after the deceased attacked the subject. The subject had no intention of killing the deceased. He only struck him once with a wooden stick and it must have surprised him that his uncle died from the blow. The object of the sentence imposed on the subject should aim at reintegrating him to become a responsible member of the community. His family has accepted the loss and is willing to support him. The subject is now aged 19 years. There is need for him to go back to school so as to finish his secondary education.

11. After considering all the above and the circumstances of the case, I am of the view that the period that the subject has stayed in custody for nearly two years is enough punishment for him. I sentence the subject to serve three years probation to be supervised by Hamisi Probation Office.

**Delivered dated and signed at Kakamega this 6<sup>th</sup> of June, 2019.**

**J. NJAGI**

**JUDGE**

**In the presence of:-**

Mr. Osango for subject

Mr. Ng'etich for state

Subject - present

Court Assistant - George