

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 87 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JAMES KARIUKI LESILAMBA.....ACCUSED

SENTENCE RULING

1. By a judgment dated 15/01/2019, the Accused Person, James Kariuki Lesilamba was convicted of the offence of manslaughter contrary to section 202 as read together with section 205 of the Penal Code. The Accused Person had been charged with the murder of Saidimu Lenailepu (Deceased). However, the Court found that the evidence did not disclose the element of malice aforethought and convicted the Accused Person of the lesser but cognate offence of manslaughter.

2. The circumstances under which the homicide occurred are contained in the judgment. In short, the Deceased provoked the Accused Person by pouring out his tea from a kettle. The Accused Person was in the business of selling the tea and he got sufficiently provoked to physically attack the Deceased. A physical duel ensued in which the Deceased ended up the worse for it. The Deceased was found lying in a ditch badly injured near Poro Centre a few hours later. A couple of days later he succumbed to his injuries.

3. In mitigation, Mr. Magata for the Accused Person, reminded the Court that it is the Accused Person that was provoked by the Deceased and that the provocation was continuous not a singular event. Mr. Magata pointed out as a mitigating circumstance that in the circumstances of this case it would have been difficult for any person to control their anger and use of force. He also asked the Court to consider that the Accused person has been in custody since 2014.

4. Mr. Chigiti submitted that although the Accused Person was a first offender, he attacked the Deceased with extreme force and used a weapon to inflict maximum injury to the Deceased. He also pointed out that the Accused Person was in the company of two other people.

5. I have considered the mitigating and aggravating circumstances in this case. I have considered that the Accused Person used a weapon and that he was in the company of two others as they beat up the Deceased as an aggravating circumstance. So, too, is the Accused Person's post-offence conduct: he left the Deceased badly injured in a ditch where he was only rescued the following morning. Perhaps if the Accused Person had acted or alerted someone of their heinous actions the life of the Deceased would have been saved. It would appear, also, from the nature of the injuries that there was little attempt to calibrate the force used to attack the Deceased.

6. On the other hand, the Accused Person is fairly young and did not plan the violence or use gratuitous violence. He was provoked by the Deceased. He is also a first offender.

7. In this case, I have come to the conclusion that a custodial sentence is merited given the circumstances which I have outlined above as the only suitable way of expressing society's condemnation of the Accused Person's conduct or deter similar conduct in the future.

8. Consequently, in my view, a fit sentence that properly balances the mitigating circumstances with the aggravating circumstances is a sentence of ten (10) years imprisonment. Accordingly, I sentence the Accused Person to ten (10) years imprisonment. Since the Accused Person has been in custody since his date of arraignment, the term of imprisonment shall be computed starting on that day, that is, on 27/08/2014.

9. Orders accordingly.

Dated and delivered at Nakuru this 19th day of July, 2019.

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JOEL NGUGI

JUDGE