

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 30 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

BONIFACE NYAKUNDI MOMANYI.....ACCUSED

RULING ON SENTENCE

The accused herein, Boniface Nyakundi Momanyi, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 4th June 2018 at about 6.00pm in Kawangware area within Nairobi County the accused killed Caleb Ongata Momanyi. The accused pleaded not guilty to the charge but the prosecution and the defence entered into a plea bargaining agreement thereafter. An agreement to that effect was entered into and this was acceptable to the court. The prosecution prepared a fresh charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code. On 26th June 2019 the charge of manslaughter was presented to the accused. He pleaded guilty.

The facts of the case show that the deceased is the father to the accused. Briefly, the accused and the deceased disagreed over a mobile phone the deceased had bought for the mother of the accused. It is said that the accused wanted the phone. When the deceased denied him, the accused picked a knife and stabbed the deceased on the abdomen and right hand wrist. Earlier that day, the accused and the deceased had been drinking together. After the stabbing, the accused ran outside to look for help. He met his sister Josephine. Both went to call their mother Margaret Kwamboka from the market. They returned to the house where the deceased was bleeding. Police were called. The body was taken to the city mortuary where the postmortem was performed on the body on 8th June 2018 by Dr. Charles Muturi. His opinion is that the deceased died as a result of exsanguination due to multiple stab wounds to the right arm, chest and abdomen.

After the facts were presented, the accused admitted them but corrected that the phone belonged to him. This court found the accused guilty of manslaughter as admitted in the plea. The court also ordered that a Probation Report be filed before sentencing and deferred the matter for mitigation. The report was filed on 17th July 2019.

In his mitigation that was presented to court on 30th September 2019, Mr. Kiunga on behalf of the accused submitted that the accused is remorseful for what happened; that his mother is elderly and that he is the sole bread winner of the family and that he has taken various courses while in custody. The accused urges the court to sentence him to a non-custodial sentence.

The prosecution submitted that the circumstances of this case call for a custodial sentence in order to separate the accused with the witnesses who are relatives. The prosecution called for a minimum of 20 years in jail.

I have read the report by the probation officer. Some family members, specifically paternal uncles of the deceased prefer a custodial sentence while other relatives plead for non-custodial sentence. The mother of the accused seems to have forgiven her son and prefers a non-custodial sentence. Despite all this it remains the duty of the court to sentence the accused. I have noted that the accused pleaded guilty and saved this court's time. His uncontrollable anger cost the family their father. It is not lost to me that the accused and the deceased were drunk when the altercation leading to the death of the deceased occurred. This is no reason to act as he did.

Having taken into account the circumstances of this case and the manner in which the offence was committed, I hereby sentence the accused to four years imprisonment. After he serves this term, he shall be placed under the supervision of Probation Office for an additional two years. Orders shall issue accordingly.

Dated, signed and delivered this 9th October 2019.

S.N.Mutuku

Judge