



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

(CORAM: R. MWONGO, J.)

COURT CRIMINAL CASE NO. 3 OF 2019

REPUBLIC.....PROSECUTION

VERSUS

ARON MIKE KIPROP.....ACCUSED

JUDGMENT ON SENTENCE

1. The Accused was charged with Murder contrary to **Section 203** as read with **Section 204** of the Penal Code. The particulars were that on 20th and 31st December 2018 at Kosovo Village in Kongoni Naivasha, he murdered Laban Kiptoo, his first cousin.

2. When accused was arraigned in court and on 5th February, 2019 he pleaded not guilty to the charge. After pre-trial had been conducted and pre-bail probation report had been produced, the defence sought to engage in a plea bargaining agreement, to which the prosecution consented.

3. The parties entered into a plea bargaining agreement pursuant to the provisions of **Section 137** of the **Criminal Procedure Code** signed on 3rd May 2019, respectively. The post mortem report prepared by pathologist Dr. Titus Ngulungu dated 8th January 2019, was attached.

4. In the Plea Bargaining Agreement, the agreed facts were as follows: That the accused and deceased persons are cousins and both residents of Kosovo Village, Kongoni. That they both earned a living through manual work. That on 30th December, 2018 at around 6pm after getting their wages for manual work, the two, with others friends, visited a chang'aa den and engaged in drinking illicit brew.

5. Whilst they were in the drinking premises, an argument arose between the accused and deceased concerning a debt of Shs 70 the deceased was alleged to owe the accused. The argument suddenly became physical and violent. Both the accused and deceased got hold of crude weapons and began to chase each other. The deceased had a knife which the accused wrestled from him during the fight. In anger, the accused stabbed the deceased with the knife and left the scene. He was arrested on the night of 22nd/23rd January, 2019 after the deceased succumbed to his injuries and died.

6. The post mortem report of Dr. Ngulungu shows that the deceased was stabbed on upper left side of the chest. No other regions showed any injuries. The cause of death was:

“severe chest injury attended by sharp trauma to the left lung with hemothorax due to sharp stab force trauma to the left chest in keeping with homicide.”

7. The parties appeared in court on 18th July, 2019 to conclude the formalities of the plea bargaining agreement. The accused was put in the stand, took oath, and was taken through the requisite questions using a bar-bench designed *Court Form for Recording of a Plea Agreement* pursuant to **Section 137F** and **137G** of the **Criminal Procedure Code**. On concluding, the accused, his counsel and the State signed the Court Form. The Court indicated its satisfaction as to the competence of the accused and his voluntary act in entering the Plea Bargaining Agreement.

8. Accordingly, the Plea Bargaining Agreement was adopted as part of the court record, and the accused was duly convicted for the offence of Manslaughter.

9. Mitigation followed. The State asserted that the accused has no previous criminal record and may be treated as a first offender. Mr. Mburu for the defence stated that the accused was 36 years old at the time of the offence, and a cousin of the deceased.

“The cause of action leading to the incident was a sudden quarrel between with the two involving Kshs 70/=. We rely on Part 3

of the Plea Bargaining Agreement as to the facts.”

10. Counsel then sought and the court ordered, that a Pre-Sentence Probation Officer’s report be availed. After the report was availed Counsel noted that it was not positive. He pointed out to the court that some of the negative aspects in it concerned social behaviour rather than criminal conduct. The court has noted that fact.

11. The Probation Officer’s report filed on 29th July 2019, states its object as:

“This is a social evaluation report aimed at establishing the sustainability of the offender for release on a probation sentence.”

The report covers background information on the offender’s family, personal profile and health status, his safety if released, the likelihood of committing another offence, community views and makes a recommendation.

12. The report shows that the offender is the third born in a family of 13 children. Both his parents are farmers living on a five acre plot of land in Baringo County. Five of his siblings are grown up whilst the rest are dependants and are in school.

13. The accused was born in 1992, and dropped out of school in standard 5 due to peer influence and lack of interest. He migrated to Naivasha, Kosovo area in 2005, where he has been doing casual jobs. He is single and in good mental and physical health. He imbibes in alcohol, cigarettes and miraa.

14. The accused fully understands the nature of the offence and its seriousness. Although he accepts responsibility for the offence, according to the Report, he however:

“does not appear to be fully remorseful and appears to blame the victim for what happened.”

The report also notes that the community has a negative attitude towards him and those questioned reported that he was a person of questionable character even before his arrest. His safety if released, cannot be guaranteed according to the report, because his siblings, cousins and neighbours are still bitter. Thus, chances of revenge cannot be ruled out. As such he would face a hostile reception from both relatives and neighbours if released.

15. The victim’s family are also reported to be bitter about the incident and oppose the release of the offender on a non-custodial sentence. They state that they:

“prefer him being in custody and believe that institutional rehabilitation is best for him.”

16. In his conclusion and recommendations, the Probation Officer states that during interview the offender pleaded for leniency and promised to reform and become more responsible. The officer’s recommendation is that:-

“the offender is unsuitable for release on a probation sentence. The home environment is hostile and not conducive for his release. The possibility of relocating minimal since the victim was a close relative and currently no relative is willing to accommodate him if released. [In] the circumstances it would be difficult to supervise the offender and chances of absconding and re-offending would be very high.”

17. I have taken into account the mitigation offered by counsel and also carefully considered the Probation Officers report. The accused appears to have a disturbed background disclosing an unsettled and distracted personality. Unable to complete school he dropped out under peer pressure and engages in drinking, smoking and miraa consumption, facts which he admitted.

18. It would appear that the anti-social aspects of his behaviour led him to a chang’aa den where an altercation over a mere Shs 70/= led him to stab his own cousin to death. Considering that conduct and the fact that his home environment would apparently be unreceptive to the accused, and considering the recommendation of unsuitability for probationary sentence stated in the Probation Report, this is a case that I agree is unsuitable for any other sentence other than a custodial sentence.

19. Accordingly, the accused is hereby sentenced to fifteen (15) years imprisonment, with the last five (5) years being suspended, if he shall have maintained good conduct to be ascertained by the Prison Authorities. The term shall commence from the date of his incarceration.

20. Right of appeal fourteen (14) days

21. Orders accordingly.

Dated and Delivered at Naivasha this 7th Day of October, 2019

RICHARD MWONGO

JUDGE

Delivered in the presence of:

1. Maingi for the State
2. Mburu F. I. for Accused
3. Accused - Aron Mike Kiprop - present
4. Court Clerk – Qinter Ogutu