



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO 49 OF 2016

LESITT, J

REPUBLIC.....PROSECUTOR

VERSUS

LEONARD KANARI GITUL.....ACCUSED

RULING ON SENTENCE

1. The accused was arraigned in court on 10th June, 2016 charged with one count of murder contrary to **Section 203** of the **Penal Code**.
2. This court delivered its Judgment on 29th August 2019, after hearing the entire case, and convicted the accused of **manslaughter** contrary to **Section 202** as read with **Section 205** of the **Penal Code**. Under **Section 205**, a person convicted of manslaughter is liable to imprisonment for life.
3. I have considered that the Prosecution has treated the accused as a first offender.
4. Mr. Opiyo Learned defence counsel mitigated on behalf of the accused. Counsel urged the court to consider the fact that the accused has no criminal record and that due to the chronology of events, the accused remained in custody for eight (8) months before he was granted bond. Counsel urged that the accused has studiously followed the bond terms including when the judgment was rescheduled and attending all the mentions dates.
5. Counsel further urged that the court should have a relook at the Probation Officers Report filed before bond was considered. Counsel urged that the accused had undergone the vigor's of trial while still undergoing treatment for the injuries he suffered during the confrontation in this case. Counsel urged that only one single bullet was dispensed and that the accused found himself in unfamiliar ground. Counsel urged that the accused had suffered the consequence having been in court for the last 3 years. Counsel urged that the accused has demonstrated by his conduct his adherence and obedience to the rule of law. Counsel urged that the accused implores on the court to consider non-custodial sentence in view of the circumstances and what the accused had undergone.
6. Counsel finally urged that the accused is aged 43 years old, married and blessed with three (3) school going children and that being a sole bread winner, he needs to take care of the children.
7. The court asked for a Pre-sentence report from the Probation Office. One dated 19th September 2019 was filed and I have considered it.
8. The accused personal background is incorporated in the report. He is said to be a business man, married and blessed with three school going children to whom he is said to be the sole bread winner and that he offers health care, company and security to his family. The report also states that the accused is a mentor to his children. On his health, the report indicated that the accused suffers from High Blood Pressure which was currently being controlled with medication.
9. On the circumstances of the offence, the Probation report indicated that the accused still denies committing the offence despite his acknowledgment of having been present at the scene. He stated that he does feel the pain the deceased family is going through and condoles with them. He expressed his willingness to reach out to the deceased family but stated that at the time, they were bitter and very hostile.
10. On the accused attitude towards the offence, the report indicated that the accused pleads for mercy saying that he has a young family that still needs him and the school going children are in need of both his financial support and parental care. The report further indicated that the accused stated that his son who is a candidate is traumatized by his predicament and that the accused fears that if he is incarcerated, the impact will be negative on all his children. The report incorporated the sentiment by the accused to the effect that, him being a person who

takes care of orphans and has employed many people, his incarceration may affect the livelihood of all of them. He contends he has an enormous social responsibility to the community and his church.

11. The home report made by the accused family and the community at large was incorporated in the Pre-sentence report. The wife to the accused described him as a responsible father and husband. She further says that he never responds to violence no matter the situation. She pleads for mercy for the sake of her young children who depend on the offender for all their needs.

12. The other people interviewed described the accused as a respectful, kind and generous person who always listened and reasoned his way out of difficult situations without ever resulting to violence. The community is said to have pointed out two students who the accused sponsored and were at risk of dropping out of school if the offender is incarcerated. The community appealed to the court to consider the number of people whose life are under the accused support and accord him a non-custodial sentence.

13. Several people from the deceased family are said to have been interviewed to generate the Victim Impact Statement. The deceased was a career banker, married and blessed with three children all of tender years. He was said to be the sole breadwinner. The deceased wife explained that she had to relocate from Langata where they lived, to south C owing to the economic hardships occasioned by the deceased death. She further stated that the family was struggling with school fees and has to rely on well-wishers for support. She explained that they were traumatized by the deceased death and this necessitated counselling sessions for both herself and her children for a period of 3 months.

14. The wife to the deceased says that after the counselling sessions, she has learnt to accept the turn of events. She however notes that neither the accused nor any of his family members have extended an olive branch to express remorsefulness, seek for forgiveness or even reconciliation. She states that they are therefore very bitter and they think they do not have room for forgiveness.

15. The deceased sister and cousin expressed their sentiments and stated that the deceased used to take care of his elderly mother for all her needs especially medical care as she suffers from High blood pressure, diabetes and Arthritis. They further stated that two of the accused siblings that he used to take care of, have had to drop out of school owing to the demise of the deceased. They stated that all these factors have not helped them come to terms with the deceased death and stated that the offender needs to face the consequences of his actions.

16. The Probation Officer had the following to note about the deceased family. She stated that she had observed both at bail assessment report and this report, that the deceased was the only male in the family as a whole. With the demise of the deceased father, the deceased had filled the gap and became the father figure to the family. Coupled up with his financial success, the deceased had become the financial pillar and support for the nuclear and extended family. The Probation Officer further stated that the most painful thing for the deceased mother is that despite her love for his sons' widow and children, she cannot control the fact that the daughter-in-law will move on and maybe go with the children. The mother feels that with the deceased demise, the daughter-in-law has drifted off.

17. The Probation Officer in her report was non-committal on her final recommendations and left the matter to be dispensed with by the court.

18. I have considered the mitigation offered by the accused defence counsel, the probation officers detailed report and the fact that the prosecution has treated the accused as a first offender.

19. I have considered that the accused was incarcerated for a period of 8 months before he was released on bond.

20. I have considered the circumstances of this case. The deceased herein was unarmed on the night in question. He became confrontational with the accused having met him in company of his girlfriend at wee hours of the night. The accused though entitled to retaliate, his deliberate act to shoot the deceased on a vulnerable part of the body was not justifiable use of force. The accused was a licensed fire arm holder and ought to have been conversant with the rules of use of firearm.

21. The accused throughout the trial has denied being armed with his gun on the material date. He has denied shooting the deceased and occasioning him injuries that led to his death. The accused has therefore not shown any pathos in his mitigation that would lead the court in understanding what led to the tragedy.

22. The accused and deceased persons have been described by their family members and community as having been generous and philanthropic people mainly to close family members. I must appreciate and commend the late, as well as the accused for having had such a positive impact to their families and the society at large. The people they were helping all have been affected either directly or indirectly by this unfortunate scenario.

23. Having considered all the facts, circumstances and reports on record, I find that the justice of this case requires a custodial sentence. In spite of accused plea for non-custodial sentence and the fact that he claims to be a man who is well known for his generous and philanthropic nature, was the deceased in this case. Unfortunately for the deceased, he is gone forever. The accused still has a chance to resume his life after this.

24. In the circumstances, I find that the most appropriate sentence to give to the accused is six (6) years imprisonment.

25. The accused has a right to appeal against the conviction and sentence within 14 days of today.

DATED AT NAIROBI THIS 7th DAY OF OCTOBER 2019.

LESIT, J

JUDGE