



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIVASHA**

**(CORAM: R. MWONGO, J.)**

**COURT CRIMINAL CASE NO. 51 OF 2015**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**GEORGE WAWERU.....ACCUSED**

**SENTENCING JUDGMENT**

1. Following conviction of the Accused on 3<sup>rd</sup> July, 2019 after a full hearing, this court is now required to mete sentence.
2. The sentencing hearing was held on 29<sup>th</sup> July, 2019 when defence counsel gave mitigation having seen a copy of the Probation Officer's Pre-sentence report. He urged the court to consider: that the accused is a first offender aged 33 years; that he was an Administration Police Officer who had worked as such for eleven years; that he was on active when the incident occurred, and that he had a clean record during his tenure of employment.
3. The Probation Officer's report dated 22<sup>nd</sup> July, 2019 was availed. It describes the accused's background. He is the last born of three siblings, the other two having only had primary level education. He is married and has two children, a boy aged 8 years and in Standard 2 and a girl aged 4 years in Pre-primary 1. They live in a rental house. He has been working for his ailing parents and paying their medical expenses.
4. The accused is of good health and has no history of drug abuse. According to the Probation Officer, the accused's attitude is positive; he says that he did not intend to carry out the act; that he had not pre-meditated the offence; that he acted at the spur of the moment whilst an active duty in a situation where the deceased was attacking him to escape arrest, and in fact used his gun as a shield to prevent being hit by the deceased, or the gun being taken away from him.
5. The accused was in the line of duty as an officer of the uniformed forces when the incident occurred. That as a result of incident, the accused has already greatly suffered; the loss of his job; that he has not been in full employment since 16<sup>th</sup> July 2015 when the offence was committed; that this loss of work is a severe punishment itself; that his family has been affected.
6. The Probation Officer's report notes that the offender's community namely, offender's and victim's home areas, local administration, local policing community and villagers all gave positive report on the offender. They said that no report of misconduct by him had ever been received. They believe he was trying to help arrest a suspect who was violent and a notorious drug dealer. They knew accused as a diligent worker.
7. The victim's family, namely the wife and son were interviewed by the Probation Officer. The wife had little to say and suggested the decision on sentencing be left to the court. She said the death of her husband left her the burden of raising her children alone.
8. In the Probation Officer's report, he noted that the accused had not exhibited any hostility during the inquiry period; that he had dutifully complied with the terms of bond given by the court; that he had exhibited remorse and sought the court's leniency. He also said he was ready to comply with any court orders if given a non-custodial sentence.
9. The Probation Officer recommended that the accused is fit for a non-custodial sentence, and that he should be reintegrated and rehabilitated within the community.
10. I have carefully considered the circumstances under which the offence was committed. The accused was on active duty and had gone with other officers to investigate a case of bhang storage and transportation. They found the deceased in his house and ordered him to

surrender and get out. It was night. Instead, the deceased got angry and started shouting and violently banging the walls in his house. He loudly threatened that he would take someone down with him. He then suddenly emerged from the back door of his house in a rush, and that is where the accused was positioned as part of the operation to arrest the deceased.

11. It was at that point that the deceased attacked the accused and a struggle ensued. The Accused's gun then went off. The bullet ricocheted from the concrete wall and into the deceased's leg. He died later from the bullet wound.

12. Taking into account all the foregoing, I think that the proper sentence for the accused is a non-custodial sentence.

(a) I therefore sentence him to two (2) years probation with effect from the date hereof.

(b) The accused will serve the sentence period, and maintain peace and be of good conduct. He shall avoid falling afoul of the law, failing which his aforesaid sentence shall be liable to revision by this court.

13. Orders accordingly.

**Dated and Delivered at Naivasha this 3<sup>rd</sup> Day of October, 2019**

**RICHARD MWONGO**

**JUDGE**

Delivered in the presence of:

1. Maingi for the State
2. Gichuki for Accused
3. Accused - George Waweru - present
4. Court Clerk – Quinter Ogutu