



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CORAM; R. MWONGO, J.

CRIMINAL CASE NO. 17 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

BENSON NGETA MURANU.....ACCUSED

SENTENCING JUDGMENT

1. The Accused was charged with the Murder of Joseph Kinuthia Chege contrary to **Section 203** as read with **Section 204** of the **Penal Code**. He first pleaded guilty on 26th November 2018 when the charge was read to him. That took his counsel by surprise. The file was placed aside for about an hour to enable counsel to converse with the accused.

2. Counsel then requested that the plea to be taken afresh, and this time the accused stated: ***“It is true but I did not understand”***. Accordingly the court entered a plea of not guilty. It was noted that the accused had been mentally assessed in September 2018, and a conclusion made that he had drug induced psychosis which rendered him unable to follow proceedings. In November 2018, a second mental health report found the accused fit to take a plea. Counsel sought time to discuss a plea bargaining agreement with the accused and his family.

3. On 2nd July 2019, the Defence informed the court that a Plea Bargaining Agreement had been negotiated between the parties in terms of **Section 137A - E** of the **Criminal Procedure Code**. The court, in accordance with Section 137F of the **Criminal Procedure Code** then placed the accused under oath and he confirmed his understanding of his rights thereunder. The court was satisfied that the accused was competent to make the plea agreement in terms of **Section 137G** of the **Criminal Procedure Code**, and accepted the same. The court then recorded the factual basis of the plea using the Court Form for Recording a Plea Agreement and involving both parties in the exercise.

4. The factual basis of the Plea Agreement is as set out in Part 3 of the Agreement. The particulars of the incident are as follows:

“On 6th September 2018 at around 1300hours the accused went to the homestead of a deceased relative of one Joyce Mumbi and found other family members preparing the burial site, the accused who was known to sometimes suffer mental illness started to disturb the relatives as he removed his shoes and trouser prompting the relatives to persuade him to clothe and wear the shoes.

That the accused again started removing his clothes and while being restrained he managed to run towards a road where he met one Joseph Kinuthia Chege (the deceased) who was heading to his farm while carrying a panga and jembe. The accused snatched the panga from the deceased and cut him on the head where the deceased fell down and the accused continued to assault the deceased with the jembe.

That members of the public and relatives rushed to the scene where they rescued the deceased and restrained accused, they took the deceased to Engineer Hospital for treatment while the accused was taken to Njabini Police Station where they reported and locked up awaiting investigations. The deceased succumbed to injuries while on treatment at Engineer District Hospital. On 10th September, 2018 Dr. Ndwigah conducted the post mortem and concluded the cause of death as severe head injury due to sharp force trauma leading to massive intracerebral hemorrhage. Post Mortem report is P. Exhibit 1.

The accused was taken for mental assessment on 12th September 2018 where Psychiatrist noted that the accused suffers substance abuses including marijuana, alcohol, cigarettes and has been on treatment at Mathare Mental Hospital for mental illness since 2013 and concluded that he was not able to follow court proceedings. Subsequent medical reports concluded accused was fit to plead and he was charged for the offence.

5. The court convicted the accused of **manslaughter** and set a hearing date for mitigation. The court also ordered a pre-sentence Probation Report which was duly filed and relied on at mitigation hearing.

6. In mitigation, counsel for the Defence filed mitigation submissions. He pointed out that the accused is known to suffer from some sort of mental illness and has had moments when he is not in control of his mental faculties. Further, he noted that the accused is a first offender; has no history of being in conflict with the law, and has had an incident free period of detention in custody.

7. Counsel point out that given lack of lucidity of the accused at the time of committing the crime and his current state, the accused is capable of getting well if given proper access to medication and medical treatment.

8. The accused was stated to be remorseful, and capable of reform. Counsel noted that the Probation Officer's report dated 10th July, 2019, opposes a non-custodial sentence, and proposes that accused be placed in custody in a secure facility. Counsel agreed with the Probation Report that the accused is in need of medical treatment for his erratic mental condition. As such, he argued, a custodial sentence will inhibit such treatment.

9. Finally, counsel submitted that the accused's father is willing to purchase a piece of land upon which to relocate the accused far from his regular habitat. Counsel relied on **Republic v Cecilia Waruguru Muriithi [2019] eKLR** and **Republic v Margaret Karimi Njuru [2018]** in which the maximum sentence was ameliorated.

10. The court has also duly considered the Probation Officer's report. The accused's family background and personal profile have been considered. The report shows that the accused has been on medication from Mathare Hospital since 2013. He has continued receiving treatment whilst in custody, which has "helped him to stabilize his mind". He is 34 years old and unmarried.

11. The report sets out the views of victim's family, and notes that they are bitter with the offender and desire to terminate his life given the opportunity. The Area Assistant Chief was also interviewed and he felt it would be wise for the accused to be given a non-custodial sentence but that he re-locate to another area, as the locals in his community may do him harm. Similarly, the members of the accused's community who were interviewed felt that the accused security could not be assured within the community, and that a non-custodial sentence would be feasible only if the accused was relocated.

12. The accused's family were interviewed and confirmed that the accused would be at great risk if released to the community on a non-custodial sentence. Accused's father is planning to sell 2 acres of his land so that he can buy land in another locality to re-settle the accused.

13. The Probation report highlights the danger to the accused's life if he is released on a non-custodial sentence. It points out that the accused has been suffering from bipolar disorder, but appears remorseful. The Probation Officer's Report concludes that:

"I do recommend to this honourable court that the offender should be put in custody in a secure facility where he will continue receiving treatment for his mental illness. He is a special offender and there should be intervention which will match his needs for further rehabilitation."

14. Having duly considered the mitigation, and noting the medical background of the offender, the court understands that he may have committed the offence in a state of mental instability. That whilst digging a grave for a funeral preparations, he suddenly removed his clothes and when restrained ran away and snatched a panga and jembe from the deceased who was heading to a shamba. He proceeded to strike the deceased with the panga and followed up by pulverizing him with the jembe.

15. This kind of unprovoked brutal act is consistent with a person whose mind is unstable, particularly for a first offender who has never been in conflict with the law. It is the brutality of the act that renders the community both fearful of and angry at the offender, hence making his security in the community problematic.

16. Having considered all the circumstances, I am of the considered view that a non-custodial sentence at this time is inappropriate. The offender is therefore sentenced to twelve (12) years imprisonment from the date of his incarceration upon the following conditions:

a) That the accused will receive appropriate medical and rehabilitation facilitation whilst in custody.

b) That if, during the said period, the offender's family are able to confirm unequivocally that they have land in a location far away from Njabini, Kinangop area where the offender can be relocated the sentence herein may be reviewed, provided that such review may not be before the expiry of three (3) years from the date of this sentence.

c) Upon any such review under (b) above, a full report of the offender's conduct whilst in prison and his treatment therein, and a report of the Probation Officer shall be availed to the reviewing court.

17. Orders accordingly.

Dated and Delivered at Naivasha this 9th Day of December, 2019

RICHARD MWONGO

JUDGE

Delivered in the presence of:

1. Ms Maingi for the State
2. Mr. Wairegi for the Accused
3. Accused - Benson Ngeta Muranu - present
4. Court Clerk - Fred Kamau