



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL CASE NO. 116 OF 2014**

**REPUBLIC.....STATE**

**VERSUS**

**MOO.....ACCUSED**

**SENTENCE RULING**

1. The accused person, MOO (“Accused Person”), was originally charged with murder contrary to section 203 as read together with section 204 of the Penal Code. The particulars in the charge sheet were that the Accused Person murdered PK on diverse dates between 14<sup>th</sup> November, 2014 and 16<sup>th</sup> November, 2014 at [Particulars Withheld] Estate within Nakuru County.

2. The Accused pleaded not guilty to the charges and the trial commenced. The Prosecution called its first three witnesses. Later, on 16/09/2019, the Prosecution and the Defence appeared before me with a Plea agreement. On this day, the Accused pleaded guilty subject to the Plea Agreement. The Plea Agreement reduced the offence charged from murder to manslaughter. The Court approved the Plea Agreement, and, after duly complying with sections 137D and 137H of the Criminal Procedure Code, convicted the Accused on his own plea of guilty on the charge of manslaughter.

3. The agreed facts are as stated in the Plea Agreement of the case. I will reproduce them here:

*On the 14<sup>th</sup> day of November, 2014 one SAAO, a mother of two and who works with [Particulars Withheld Kenya Nakuru branch went to Nairobi leaving behind his two adapted boys namely JK aged 22years and MO ages 19 years at her rental residential house situated within Freehold Nakuru.*

*On returning back on 16<sup>th</sup> of November, 2014 she entered into the house and was rather shocked and confused. When discovered the house was dark as it was around 0900pm. The lights had not been lit; the doors were partly closed except that of the eldest son’s bedroom namely – the later JK.*

*His body was later found in the house.*

*Meanwhile the other boy one MO was conspicuously missing and to this she called neighbours who later informed the police. The police visited the scene and later retrieved the body to Nakuru Municipal Morgue awaiting autopsy. Later statements ie the mother and the two neighbours were recorded. One MO the 2<sup>nd</sup> son arrived home after the body had been collected by police. The seemed confused and kept talking to himself. He could not explain to where he was nor what had happened.*

*We returned to the house and on seeing the police he spoke out passionately about his now found religion and order to cleanse the house from idolatry and that he had started with his brother. He further stated that he killed him using a kitchen knife and thereafter washed it plus all the clothes they wore and thereafter took the body of the deceased and put it on bed in a sleeping position, covered with a bed sheet and prayed to him earnestly that he might be forgiven for he died a martyr.*

4. The Court invited the family of the victim to make a Victim Impact Statement and address the Court if they were so minded. This case is as sad as they come. The mother of the Accused Person, SAO addressed the Court doubling up as both a Victim and in mitigation on behalf of the Accused Person. This is because, it turned out, the Deceased was an un-officially adopted son. The Accused Person’s best friend, the Deceased had gone to live with Suzanne since he was a child of tender years after being abandoned by his family. S took him in under her wings, clothed him, fed him, and took him to school. She, in fact, withdrew his son, the Accused Person, from an expensive private school so that she could afford school fees for the two boys in a less expensive school. She spoke with the anguish of a mourning mother; and indeed, for all intents and purposes, she is a mother who tragically lost a son.

5. S also pleaded for her biological son, the Accused Person. She begged for a lenient sentence for him. She apologized to the biological family of the Deceased. She confessed that her son had fallen into the bad habit of substance abuse and that this had caused him considerable mental damage. However, S told the Court that she had taken him for expert advice and that he is now doing better mentally. She begged for non-custodial sentence for him.

6. The Defence Counsel, Mr. Kabita, was of like mind. He submitted that the real culprit in his case was the State for failure to prioritize mental health issues. Mr. Kabita submitted that if the State had taken seriously its responsibility to fulfil the right to health to the highest possible standards as constitutionally required, the Accused Person's mental health issues would have been detected earlier and help offered. He suggested that no useful purpose will be served by incarcerating the Accused Person especially given the fact that he had already received mental health treatment.

7. Mr. Chigit, for the State, thought that a custodial sentence was warranted. He noted that an innocent life was lost at the hands of the Accused Person. He further noted that the crime was fueled by the use of drugs; and that a weapon – a knife was used to commit the homicide. He was of the opinion that a custodial sentence of five years was called for in the circumstances of the case.

8. I have considered the totality of the circumstances in the case. Both mitigating and aggravating circumstances are present. Regarding the former, a major consideration is that the Accused Person pleaded guilty and saved judicial time and much heartache to the family. It is also a factor that the Accused Person was under the influence of drugs – even though not sufficient to completely negate mens rea. The Accused Person is also remorseful for his actions. Finally, the Accused Person is fairly young, and has good antecedents – including advocating for his mother to take in the Deceased into their home.

9. On the aggravating equation, the use of drugs – which has continued post-offence – rates high. As the Accused Person's mother admitted, the use of drugs was a major factor in the commission of the crime. It is heart-breaking that the Accused Person has failed to completely cut off the use of drugs. This does not augur well for his future. It would seem that there is need to send a clear message to him that he has to turn a new leaf in his life.

10. While this is a tragic case as outlined by the Accused Person's testimony, I agree with the Prosecution, that custodial sentence is called for here. Here, there is a need for denunciation or deterrence given the circumstances of the case. Indeed, I believe that the circumstances are such that incarceration is the only suitable way of expressing society's condemnation of the Accused Person's conduct or deter similar conduct in the future.

**11. Consequently, in my view, a fit sentence that properly balances the mitigating circumstances with the aggravating circumstances is a sentence of three years imprisonment. Accordingly, I sentence the Accused Person to three years imprisonment.**

12. Orders accordingly.

**Dated and delivered at Nakuru this 5<sup>th</sup> day of December, 2019**

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**JOEL NGUGI**

**JUDGE**