



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO. 12 OF 2017

JOSHUA ONCHIRI SIMIYUACCUSED

VERSUS

REPUBLIC PROSECUTOR

SENTENCE RULING

1. The Accused Person herein is Joshua Onchiri Simiyu. He is a twenty-six year old young man. He is single. He comes from a family of five; he is the first born. He grew up in Naivasha and went to Kiambogo Primary and Secondary Schools for his education. He dropped out in Form 2. He joined music classes at Zambezi Polytechnic but found them unpromising as a full career option. He went to Limuru town where he was employed as a waiter in a local restaurant. In 2013, he moved to Githunguri where he was employed as a cook in a local restaurant. He remained in that job until his arrest in February, 2017.

2. Immediately the Accused Person moved to Githunguri town, he became friends with Patrick Murigu Mugo (“Deceased”). They played musical instruments together and got playing gigs for various musicians. They were best friends.

3. On 27/11/2016, the Accused Person and the Deceased played together at a gig for the launch of a Music CD. That evening, the Deceased gave me a call and invited him to his house to share about something. This is what happened next:

....At around 7.00 PM the Accused Joshua Onchiri went to visit his friend the Deceased, Patrick Murigu Mugo, who was living in a rental house in Githunguri within Kiambu County. At about 8:25pm, the Deceased received a phone call from his girlfriend one Alice Karimi after which he showed the Accused the photo of the lady. The Accused recognized the lady as his fiancé and a quarrel ensued over the issue which resulted to a physical fight. The Deceased picked a kitchen knife and attacked the Accused and the Deceased was accidentally stabbed by the Accused during the fight. The Deceased sustained stab injuries on the left side of the chest and succumbed to injuries while at Kiambu Level 4 Hospital. Meanwhile the Accused ran away but was caught by the members of the public on 27th January 2017, subjected to mob justice but was rescued by Police from Kiambu Police Station who arrested him, took him to hospital and later charged with the offence of murder.

4. This is from the Agreed Facts in the Plea Agreement the Accused Person entered into when the Prosecution and the Defence agreed to reduce the charge the Accused Person was facing from one of pre-meditated murder to the offence of manslaughter contrary to section 202 as read together with section 205 of the Penal Code.

5. The Accused Person has pleaded guilty to the offence of manslaughter subject to the Plea Agreement and I convicted him on his own guilty plea.
6. When the matter came up for sentencing, the Prosecution Counsel, Mr. Maatwa, indicated that the Accused Person is a first offender. He also indicated that he had talked to Francis Kinyua Wawira, a brother to the Deceased who indicated that the family had forgiven the Accused and that they leave it to the court to decide on the appropriate sentence. The Prosecution also wished to associate itself with the sentiments of the family.
7. On the part of the Accused Person, his Counsel, Mrs. Hellen Wambui filed submissions in mitigation. She urged that the Court should consider giving a sentence of one-year non-custodial sentence taking into account that the Accused Person has been in custody for more than a year. Mrs. Wambui also submitted that the Court should consider that the Accused Person is a young man of about 26 years old with a productive life ahead of him. She cited *R v Charles Ongeni Okemwa [2015] eKLR* and *R v Philip Muthiani Kathiwa [2015] eKLR*. I am familiar with those decisions and I re-read them for this sentencing exercise.
8. On his part, the Accused Person addressed the Court and, first, prayed for forgiveness from the family of the Deceased and the Court. He told the Court that the homicide was not intended. He said he was sorry. The Accused Person also informed the Court that he appreciated the time that he was in custody because he has had a chance to think about his life and reform. During this time, he said, he has become a changed man. He has become a Christian and has seen the hand of the Lord, he said.
9. To demonstrate his will to change, the Accused Person produced Certificates to show that while in remand he attained, through correspondence, several certificates and diplomas from Emmaus Bible School, Protestant Christ Church, Bible League, Ministry of Repentance and Holiness, Prison Fellowship International and Prison Fellowship Kenya. The Accused Person also told the Court that he has now learnt anger management. He is eager to be released to go back to the community to share with other young people about ways to avoid the traps he found himself in due to his anger. He declared himself ready to go minister to the young people to change their ways
10. I have carefully considered all the factors in the case.
11. On the extenuating circumstances side of the equation, I have considered that:
 - a. The Accused Person is a first offender with a whole productive life ahead of him at merely 26-years of age;
 - b. The Accused is a first offender;
 - c. The Accused Person is demonstrably remorseful as his narrative of his reform while in remand shows.
 - d. The Accused Person pleaded guilty to the offence and save the Court much judicial time and the family of the Deceased much anxiety and heartache at having to go through a trial.
 - e. The Accused Person has good antecedents in the community and has much prospects for full rehabilitation as the Pre-Sentence report shows.
 - f. The manner of commission of the offence does not demonstrate any particular violent, planned or deranged character. It was a product of a spontaneous anchor which the Accused Person deeply regrets as the victim was his best friend.
 - g. The family of the victim has forgiven him and he has expressed remorse to them.
12. Against all these mitigating factors, there is one glaring aggravating factor: the post-offence conduct

of the Accused Person. It is one thing to take a wrong step in a moment of impetuous fury; it is quite another to plan an elaborate escape from the place of infamy where one committed the brutal act; and yet another to remain a fugitive of justice for well over two months until arrested – not by the pangs of conscience but by the brutal hands of mob justice who act in righteous indignation at one’s attempt to escape justice.

13. For this reason, while I accept that the Accused Person is eminently capable of rehabilitation, I do think that it is important that the society demonstrates its disapproval at the pattern of the Accused Person to compound his early mistakes through his elaborate post-offence conduct.

14. Consequently, I am of the view a short custodial sentence is merited in this case. After taking into consideration that the Accused Person has been in remand for more than a year, I will therefore sentence the Accused Person to imprisonment for one year from today.

15. Orders accordingly.

Dated and delivered at Kiambu this 7th day of June, 2018.

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JOEL NGUGI

JUDGE