



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
HIGH COURT CRIMINAL CASE NO 92 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH MAINA NDERI.....ACCUSED

SENTENCE

1. The convict **JOSEPH MAINA NDERI** was on 21/3/2018 convicted of the offence of murder of **WILLIAM LITUNYA AMBUNDA** on 28/9/2014. Upon his conviction the same made an oral application through his advocate on record to be supplied with copies of Judgement to enable the same mitigate which have now been supplied.

2. In mitigation, the accused on 16/5/2018 filed his written mitigation in addition to the oral submissions by Mrs. Nyamongo his Advocate on record. The convict in his written mitigation stated as follows:-

(a) He had been in custody for a long time.

(b) Had a dependant family which looked upon him for upkeep and maintenance.

(c) He was a young man who was hard working.

He sought to be granted non-custodial or Community Service Order with the court taking into account the period he had spent in custody under **Section 333 (2)** of the **Criminal Procedure Code**.

3. Mrs. Nyamongo for the convict stated that the convict had been rehabilitated during the period he had been in custody. He was sympathetic with the deceased family since the same was his friend. He was a first offender who came from a very humble background married with two children aged eight (8) and four (4) years together with an aged mother who depended on him.

4. On behalf of the prosecution Ms. Wegulu submitted that the deceased family had been left without a breadwinner and therefore sought a deterrence sentence to discourage the convict from committing similar offences.

5. In compliance with the Judiciary Sentencing Policy Guidelines the court called for Pre-sentencing report which was filed and in which it was indicated that the convict's parents separated while he was sixteen years of age and was brought up solely by his mother. He dropped out of secondary school while in form two before moving to Nairobi where he engaged in the business of selling fruits and offloading goods from motor vehicles. He denied committing the offence convicted of and is therefore bitter from

being convicted.

6. On the Victim Impact Statement, the deceased was staying with an elderly woman who had two children from a previous marriage and was the corner stone of this family which he supported. According to the sister of the deceased, the accused used to be with the wife of the deceased wherever he was away and was allegedly with her on the fateful day.

7. The objectives of sentencing as per the Judiciary Sentencing Policy Guidelines 4.1 are as follows:-

- 1) ***Retribution: to punish the offender for his/her criminal conduct in a just manner.***
- 2) ***Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.***
- 3) ***Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law abiding person.***
- 4) ***Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.***
- 5) ***Community protection: to protect the community by incapacitating the offender.***
- 6) ***Denunciation: to communicate the community's condemnation of the criminal conduct.***

8. Whereas the convict has sought to be given a second chance to rejoin the society and continue with nation building, I have looked at the circumstances under which the offence herein was committed and whereas the convict only inflicted one stabbed wound upon the deceased, I have noted that it was aimed at the chest and it landed onto the lung of the deceased thereby denying the same an opportunity to survive. I have noted that the accused was a volunteer who responded to the call of the deceased's wife who was his friend. The accused should not have intermeddled in the dispute between the deceased and his wife save for helping them resolve the same but not to get the deceased out of the way. I have taken note of the sentiments of the deceased sister on the relationship between the deceased and the deceased wife.

9. The action of the accused therefore calls for a deterrence sentence which can only be served in prison. I am therefore satisfied and find that an imprisonment sentence of twenty (20) years would be an adequate, just and appropriate sentence and it is so ordered. Of these terms the convict shall be given credit from 7/10/2014 to 21/3/2018 being pre-conviction detention as period served under the provisions of **Section 333 (2)** of the **Criminal Procedure Code**.

10. The convict has a right of appeal both on sentence and conviction while the prosecution has a right of appeal on sentence.

DATED, DELIVERED and SIGNED at Nairobi this 5th day of **June 2018**.

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J. WAKIAGA

JUDGE

In the presence of:-

Miss Wegulu for the State

Mrs. Nyamongo for the accused

Accused present

Court Assistant - Karwitha