



REPUBLIC OF KENYA

HIGH COURT AT NAIROBI

CRIMINAL CASE NO. 69 OF 2015

LESITT, J

REPUBLIC.....PROSECUTOR

V E R S U S

ONESMUS MUTUKU MWOLOLO.....ACCUSED

RULING ON SENTENCE

1. The accused **ONESMUS MUTUKU MWOLOLO** was initially charged with one count of murder contrary to **section 203** of the **Penal Code**. There was a successful Plea Bargaining exercise in which the parties entered into an agreement reducing the charge against the accused to manslaughter contrary to **section 202** of the **Penal Code**.
2. I have considered that the accused has pleaded guilty to a lesser charge thus saving the court precious time. I have also considered that the accused has been in custody pending this case for the last 3 years.
3. Mrs. Kinoti, Learned Prosecution Counsel has treated the accused as a first offender. Counsel urged that the prosecution has not received any records from the DCI on the accused previous record. I have treated the accused as a first offender.
4. Mr. Swaka for the accused in mitigation urged the court to consider that the accused is extremely remorseful for the offence, that the deceased was his friend of many years and the incident will be a permanent scar in his heart and mind; and a burden he will carry the rest of his life.
5. Mr. Swaka urged the court to consider that death was not intentional but was caused by impairment of his mind due to alcohol. Counsel urged that the accused was a child of a single mother and grew up in the slums and that due to poverty his education was cut short.
6. Mr. Swaka urged that his client has undergone 4 courses while in custody and that these have led to immense transformation and mentorship. Counsel sought a non-custodial sentence for the accused.
7. In addition to the submissions by both counsels regarding sentence, the court called for a Social Inquiry Pre-Sentence Report from Probation. One has been filed which I have considered.
8. The victim impact statement contained in the Probation Report surprises the court because in it the family of the deceased indicates that they were ready and willing to be reconciled with the accused family subject to cultural compensation to which both parties ascribe to. My surprise is that the Plea Bargaining is expected to include discussions between the State, the defence and victims. It appears as if one step was missed. However, it does not affect the duty of the court to pass a sentence in this case. The accused is encouraged to consider the gesture by the deceased family.
9. I have considered all that has been said by all sides which is part of this record. In addition I have considered the circumstances of the offence. The accused and deceased had been drinking in some illicit brew den when both were thrown out of the den for being rowdy and confrontational. It was as they went out that they saw a knife.
10. The deceased is said to have developed interest over the knife and tried to grab it. The accused disarmed him and then stabbed him once. The deceased did not make it and died the following day after the incident.
11. The facts show that intoxication played a big role to the incident. In addition also it is clear that the accused and deceased picked a quarrel as they took their drinks and that prior to that, no grudge or ill will existed between them.
12. Even though the family of deceased seems to have been left out of the discussions during Plea Bargaining, they seem to be happy to leave

it to the court to determine the sentence to impose on the accused.

13. Having taken all these factors into consideration, I find that a non-custodial sentence ought not to be considered in this case so as to give the accused time to reflect on his life and completely change from substance abuse. I will give him a light sentence given his previous good record.

14. I sentence the accused to 3 years imprisonment.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF JULY, 2018.

LESIT, J

JUDGE