



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NO 11 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

CHARLES KAMAU NGANDU.....1ST ACCUSED

LUCY WANGECHI MWANGI.....2ND ACCUSED

SENTENCE RULING

1. The two Accused Persons are husband and wife. They were charged with murder contrary to section 203 as read together with section 204 of the Penal Code. They were charged with jointly killing, with premeditation, Stephen Macharia Ngandu on 14/02/2013 at Mukeu Village in Nyandarua County.

2. In a judgment dated 11/06/2018, Justice Maureen Odero convicted both Accused Persons to the lesser but cognate offence of manslaughter.

3. I held a sentence hearing on 26/07/2018 where the Prosecutor, Mr. Chigiti and Mr. Githui, Counsel for the Accused Persons as well as the 1st Accused Person addressed me on the appropriate sentence. The family of the victim did not file any Victim Impact Statement or address me at the Sentence hearing. I have considered the submissions of both Counsels and the address of the 1st Accused on behalf of both Accused Persons as well as the Pre-Sentence Report which was filed in Court on 07/08/2018 at the Court's request.

4. The circumstances under which the offence was committed are contained in the Judgment by Justice Odero and in the Trial Court record. Mr. Githui submitted at length about those circumstances. In short, the record indicates that the Deceased was a violent man. He was a brother to the 1st Accused Person. He had often attacked the Accused Persons. The Accused Persons had frequently reported the attacks to the Police. The Deceased was a retired Administration Police Officer who had violent tendencies as per the Prosecution witnesses. On the day of his death, the Police had tried to arrest him for attacking the Accused Persons. They Police were unable to do so. He hid from sight until the Police Officer left frustrated only to reappear later and attack the 1st Accused Person. In the ensuing melee, the 2nd Accused Person joined to help her husband. The result was death to the Deceased at the hands of the two Accused Persons.

5. The Learned Justice Odero found as a fact that the provocation and attack by the Deceased did not rise to the level of absolute self defence to warrant an acquittal of the Accused Persons. She, thus, convicted the Accused Persons of manslaughter.

6. Mr. Chigiti is persuaded that the Accused Persons belong in prison. He recommended imprisonment for ten years. He argued that there are aggravating factors: that the convicts had an opportunity to cool their tempers and disarm the Deceased but chose not to; that the two Accused Persons mercilessly beat the Deceased; that the body had several lacerations and fractures – which confirmed the magnitude of force used; and that the intended to kill the Deceased since the force used was excessive.

7. It is important to point out that the Court has already determined as a fact that the two Accused Persons did not act with pre-meditation.

8. I have also considered the following mitigating factors:

i. Both Accused Persons are first offenders;

ii. The Deceased was the aggressor and acted with extreme provocation over a period of time;

iii. The Accused Persons are remorseful and I formed the opinion that they were genuine in their remorse;

iv. The Accused Persons are parents of seven children – the youngest of whom is nine years old. All the seven are minors;

v. The circumstances of the offence do not disclose any particularly depraved or gratuitous use of violence by the Accused Persons – although I considered the fact that witnesses testified that the Accused Persons continued beating the Deceased long after he no longer posed any threat to their life or limb; and

vi. The Probation Report of both Accused Persons recommends non-custodial sentence as appropriate sentence.

9. Having considered all these factors – including the fact that the Learned Judge concluded that the Accused Persons used excessive force even after at least two third parties who went to the scene pleaded with them to stop any further assaults on the Deceased – I am persuaded that the custodial sentence already served by the Accused Persons is sufficient. The two Accused Persons have both been in custody since 22nd June, 2018 when I read the judgment. During that period, the two Accused Persons have had an opportunity to reflect on their actions and come to terms with the loss of life that occurred as a result of their actions.

10. In the circumstances, I am persuaded that going forward, a non-custodial sentence is appropriate. I will, therefore, sentence each of the Accused Person to Probation for a period of three years each.

11. Orders accordingly.

Delivered at Nakuru this 20th Day of September, 2018

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JOEL NGUGI

JUDGE