

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO. 32 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

RAPHAEL OTIENO OBUYA.....ACCUSED

RULING ON SENTENCE

1. The accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 4th day of December 2017 at Kipsitet trading centre, he murdered Stephen Okoth.
2. He pleaded not guilty to the offence and the case was set for trial. However, pursuant to a plea agreement dated 25th June 2018 entered into between the accused and the state, the accused pleaded guilty to the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The state indicated that the accused is a first offender.
3. In mitigation, Ms. Chelimo for the accused submitted that the accused was very remorseful for his actions which had led to the death of the deceased, and was asking for forgiveness from the court. He had learnt his lesson and was promising that given another chance, he would not repeat the same mistake. He was the sole bread winner of his family which has been suffering in the period that he was in custody.
4. The facts of the case as presented by the Prosecution Counsel, Mr. Ayodo, are that on the 4th of December 2017 at around 7.00 p.m., the accused and the deceased closed their puncture repair business and proceeded to a hotel to take supper. On the way, the deceased diverted to a nearby wines and spirits shop and started taking beer. The accused became impatient since he was hungry and tired, and proceeded to a nearby hotel to eat. Thereafter he went to the house to sleep.
5. At around 1.30 a.m. that night, the deceased arrived at the house that he shared with the accused and started quarrelling with the accused. The deceased then took a tyre lever and started hitting the accused on both legs and head several times. The accused person then stood up in a bid to defend himself and pushed the deceased towards the door. The deceased fell down as he was drunk and could not resist the force used by the accused, and he died thereafter. The police visited the scene after receiving a report from one of the witnesses and found the body of the deceased lying on the ground outside the home in which the accused and deceased were living in the Kipsitet Centre.
6. The accused person was arrested by police and taken to Kericho District Hospital for treatment of the physical injuries he had sustained. The accused person had a swelling on the left hand, back, head and a cut at the back of his head. He was treated and discharged.
7. A post mortem was conducted on the body of the deceased at Kericho District Hospital by Dr. Kobelia. He found that the cause of death of the deceased was massive intra-abdominal haemorrhage secondary to spleen rupture. The post mortem report is produced as exhibit 1.
8. I have considered the facts of this case and the mitigation offered by Counsel for the accused. I have also noted the contents of the social inquiry report prepared by the Probation Service dated 2nd October 2018. The accused is described in the report as a well-mannered person who had no issues with anyone prior to this incident. He is described by his employer as a good and hardworking person. The Probation Officer recommends a non-custodial sentence for the accused.
9. I note that the accused and the deceased were business partners, and were even sharing a house. The accused was asleep in the house when the deceased came home, the worse for drink, and started to attack the accused with a tyre lever. From the facts, it would appear that the accused acted in self-defence, in the face of the attack by the deceased with a tyre lever. The post mortem report indicates that the deceased died from abdominal haemorrhage secondary to a ruptured spleen. Given the facts presented to this court, it is not clear how the abdominal injury was sustained.
10. Nonetheless the facts before me demonstrate that the deceased was the aggressor. He attacked the accused, whom he found asleep in the early morning hours. He was drunk, so the accused had no choice in the matter but to try and defend himself by pushing the deceased away.
11. It is tragic that a human life was lost in such circumstances. The accused has lost a business partner, and probably a friend, in circumstances that could have been avoided.
12. In the circumstances of this case, I am satisfied that the accused is deserving of leniency from the court. He has already spent over 10 months in custody. He is therefore sentenced to the term already spent in custody, and a further one year on probation, to be supervised by the Probation Office, Kericho.

Dated Delivered and Signed at Kericho this 11th day of October 2018

MUMBI NGUGI

JUDGE