



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**CRIMINAL CASE NO.19 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**VINCENT NYANGWESO MONG'ARE *alias* MDOSI.....ACCUSED**

**RULING ON SENTENCE**

1. The accused, Vincent Nyangweso Mong'are *alias* Mdosai was 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 4<sup>th</sup> day of June 2016, at Kapkatet Village in Soin-Sigowet sub-county within Kericho County, he murdered Bernard Kiplangat.
2. The accused pleaded not guilty to the offence and his case was set for trial. However, pursuant to a plea agreement dated 25<sup>th</sup> June 2018 between him and the state, he pleaded guilty to the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code and was convicted on his own plea of guilty. The state indicated that it had no previous record on the accused and he could be treated as a first offender.
3. The facts of the case as presented by Mr. Ayodo for the prosecution were that on 4<sup>th</sup> June 2016, at around 2200 hours, the accused was at Kapkatet village. The deceased, Bernard Kiplangat, arrived at Mercy Chepkurui's house. Mercy was the deceased's girlfriend. The deceased knocked on her door and when she opened, he demanded that she gives him a torch. Mercy gave him the torch he wanted and the deceased threw it at the wall and slapped Mercy. Mercy then ran away into the tea farm and the deceased ran after her. He caught up with her and grabbed her shirt, prompting her to call for help from her neighbour, Jared Nyakango, by shouting his name. On hearing the commotion, Jared came out with the accused, who was in his house. The accused was ahead of Jared when they came out and he directed a torch to where the deceased was assaulting Mercy.
4. On being attracted by the torch held by the accused, the deceased stopped assaulting Mercy and ran towards the accused. He punched the accused as the accused was retreating towards the house. Jared, who was behind the accused as the accused was being punched by the deceased, was trying to hold the accused in a bid to block him from being hit by the deceased. The accused then took a kitchen knife which was nearby and stabbed the deceased on the upper left side of his chest.
5. On seeing blood oozing from the deceased's chest and that he was having difficulty breathing, Jared and the accused left the scene in fear. The deceased died a few minutes later. Mercy, who was present, then informed a neighbour of the incident, and the neighbour called their boss at the tea estate. The matter was reported at Sondu Police Station. The accused was arrested on 5<sup>th</sup> June 2016 at Borabu in Nyamira County.
6. A post mortem conducted on the body of the deceased by Dr. Gilbert Langat at Kericho District Hospital established that the deceased died as a result of severe haemorrhage and cardiac arrest secondary to a stab wound to the heart. The prosecution produced the post mortem report as exhibit 1.
7. In mitigation, Mr. Sang for the accused stated that the accused was remorseful and contrite for the loss of the deceased. He was 23 years old at the time of the incident and was recently married. He was repentant and regretted that he had caused the death of the deceased. However, the deceased was the aggressor who provoked the accused to a substantial degree. The accused had no intention of cutting short the life of the deceased; that at the time of the scuffle, the accused was half-asleep, drowsy and had impaired judgment. He had tried to intervene when the deceased was assaulting his girlfriend, but was attacked by the deceased and that is why he reacted in self-defence.
8. Mr. Sang asked the court to take into consideration that by his plea of guilty, the accused has aided the court by ensuring the prompt and certain application of correctional measures to him; has acknowledged his guilt and has shown willingness to assume responsibility for his conduct. He prayed for leniency on behalf of the accused and urged the court to take into account the period the accused has been in custody and give him a non-custodial sentence.
9. I have considered the facts of this case and the social inquiry report filed by the Probation Service in respect of the accused on 24<sup>th</sup> September 2018. I note that he is a first offender, and he is described as a law abiding person who worked as a tea picker in Kericho and had not been known to involve himself in criminal activities.
10. With respect to the events that led to the accused finding himself in conflict with the law, the facts show that he was responding to a distress call by the girlfriend of the deceased, whom the deceased was assaulting. It is unfortunate that the accused defended himself from being punched by the deceased by seizing a kitchen knife and stabbing the deceased, resulting in the loss of a human life.
11. I note that the deceased has been in custody for a period of two years. I believe that during that period, he has had a chance to reflect on his actions, and to learn the necessity of bridling his anger and not to use unreasonable force even when provoked, as he was in this case.

12. Accordingly, I hereby sentence him to the period of two years already spent in custody, and probation for a period of two years, to be supervised by the Probation Service, Kericho.

**Dated Delivered and Signed at Kericho this 3<sup>rd</sup> day of October 2018**

**MUMBI NGUGI**

**JUDGE**