



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO.21 OF 2017

VICTOR CHERUIYOT KEMBOI ACCUSED

VERSUS

REPUBLIC RESPONDENT

RULING ON SENTENCE

1. The accused, Victor Cheruiyot Kemboi, 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 17th day of August 2017 at Kaitui centre in Kericho East District, he murdered Josphat Kipkorir. He pleaded not guilty to the offence.
2. Pursuant to a plea agreement dated 25th June 2018 between the accused 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.
3. The facts of the case presented to the Court by the Prosecution Counsel, Mr. Ayodo, are that on the 17th day of August 2017, at around 6.00 p.m., the deceased was taking a drink at a bar situated in Kaitui Centre when the accused joined him. A quarrel ensued between the two when they were both drunk, and a bitter exchange of words resulted in a fight between them. In the course of the fight, the accused person kicked the deceased in the stomach and punched him in the head before they were separated.
4. At that point, there was no sign of physical injury on both the accused and the deceased after the fight. The two shared a piece of cigarette and smoked together. The accused thereafter left the deceased at the bar, drinking.
5. After a short while the deceased went outside the bar through the rear door and slept on the grass. Two people who were in the bar saw him and asked him if he was alright, but the deceased could not talk, only indicating through gestures that he was not feeling well. He was taken to a nearby hospital but was referred to Kericho District Hospital, where he was pronounced dead on arrival.
6. A post mortem revealed that the deceased died as a result of massive internal bleeding due to trauma to the abdomen by a blunt instrument. The post mortem was produced as exhibit 1.
7. A report of the incident was made at the Kericho Police Station and investigations commenced. The investigations revealed that the accused and the deceased had had a previous fight in 2016 when they had travelled to Transmara. When they met again in the bar on 17th August 2017, the deceased had brought up the issue of the previous fight when they were drinking together, resulting in the fight which resulted in the death of the deceased. The accused surrendered himself to the area Chief and was handed over to the arresting officer. He was then charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code, which was reduced to manslaughter contrary to section 202 as read with section 205 of the Penal Code pursuant to the plea agreement.
8. The state indicated that it had no previous records on the deceased and he may be treated as a first offender.
9. In mitigation, Mr. Mwita, Learned Counsel for the accused, submitted that the accused was a 22 year old man, full of youthful ideas, who was praying that his resourceful years are not held in custody. He was a last born in a family of 3, which had been depending on his boda boda (motor cycle) business. He was very remorseful to have accidentally caused the death of his friend, whom he had shared social moments with.
10. Mr. Mwita submitted further that both the accused and the deceased were drunk and the accused thought what they had was a normal fight that could not lead to death. Having found out that he had caused the death of his friend, he was remorseful and had handed himself over to the authorities. He was a first offender, was remorseful and he pleaded for leniency.
11. The Probation Service filed a report on the accused, which I have considered. It shows the accused to be a 22-year old man who had dropped out of school at standard 5 due to lack of interest. He had quarrelled with the deceased over some money the deceased had borrowed

from him, leading to the fight which resulted in the death of the deceased.

12. I have noted the mitigation offered on behalf of the accused by Mr. Mwita. It is true that he is a first offender, a young man, whose youthful and resourceful years should, ideally, not be spent in custody. However, I am conscious that an equally youthful life, indicated in the post mortem report to have been around the same age as the accused, was cut short. It was cut short by what can only have been a vicious kick to the abdomen, resulting in the ruptured spleen which caused the massive haemorrhage from which he died.

13. I have noted that the accused is remorseful, and that he undertakes to change and never get into a fight again. However, I believe he deserves a custodial sentence, to have time to reflect on the value of human life, not just his own, but that of his fellow men. To remember that the human frame is delicate, and a vicious blow or kick such as he inflicted on his friend can very easily result in death.

14. I accordingly hereby sentence him to serve a prison term of 3 years.

15. He has a right of appeal against sentence to the Court of Appeal.

Dated Delivered and Signed at Kericho this 3rd day of October 2018

MUMBI NGUGI

JUDGE