



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO. 12 OF 2017

REPUBLIC.....PROSECUTION

VERSUS

KIPIYEGON VINCENT TERER.....ACCUSED

RULING ON SENTENCE

1. The accused, Kipyegon Vincent Terer, 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 13th day of May 2017 in Waldai Location in Kericho West sub-county, within Kericho County, he murdered Justus Kiprono Ngetich.

2. The accused pleaded not guilty to the offence and the matter was scheduled for trial. However, pursuant to a plea agreement with the state dated 26th September 2018 he pleaded guilty to the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code and was convicted on his own plea.

3. The facts of the case as presented by Mr. Ayodo for the state are that on 13th May 2017 at around 2300 hours, at Sosiot Market within Waldai Location in Kericho, the deceased and his friend by the name Gideon Yegon were refreshing themselves in one of the bars in Sosiot market. The accused person went to the same bar, also to have a drink, and sat next to the deceased person. As they were taking their drinks, the deceased person together with a group of his friends confronted the accused person asking him why he had an intimate relationship with the deceased's girlfriend. They threatened him with death if he continued having an affair with the deceased's girlfriend. They then left the bar and on their way home, Gideon left the deceased to go and check on his food in a nearby hotel, which he had earlier ordered.

4. While in the hotel, Gideon heard some noise and commotion outside. He found the deceased and asked him what was happening. The deceased told him he had a quarrel and a fight with the accused person. At that point the deceased sent Gideon to go and bring him his panga which Gideon had kept for him; saying that he intended to walk home with the panga to guard himself. When Gideon left to go and get the panga, the deceased picked a quarrel again with the accused over a bag that the deceased was carrying on his back. At that time the deceased was on a motor cycle. The accused person pulled him down from the motor cycle and they started fighting. In the process, the accused person drew a knife and hit the deceased on the forehead using the knife handle as self defence and the deceased fell down. The accused person then stabbed the deceased on his back and run away carrying the knife.

5. Gideon, who had been sent to get a panga, was on his way back. He found that the deceased had been injured, and he took him to Sigilai Private Health Centre with the help of other people who were attracted by the commotion. They were then referred to Sosiot Health Centre and the deceased's family later took him to Siloam Hospital, Kericho, where he died while receiving treatment.

6. The body was taken to Siloam mortuary where a post mortem was conducted by Dr. Mora. The doctor noted that the body had a stab wound to the lower chest wall on the posterior aspect which penetrated until the interior chest wall and injured the superior vena cava. The doctor formed the opinion that the cause of death was hypovolemic shock due to interior vena cava rupture (internal bleeding) and hypoxia due to left lung collapse. The post mortem report was produced as exhibit 1.

7. The accused had, in the meantime, gone into hiding. However, the Officer Commanding Station, Sosiot Police Station, received information that the accused was at Kiptaldai area and was intending to surrender himself to the police. The OCS went with police officers to Kiptaldai area but on their way they met villagers with the accused person on the way to the police station. He was arrested by the police and charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code which has been reduced to manslaughter contrary to section 202 as read with section 205 of the Penal Code. The state indicated that the accused is a first offender.

8. In mitigation on behalf of the accused, Mr. Koske stated that the accused is aged 29 years old and is a medical practitioner. He was a first offender and was remorseful and apologetic about the offence he committed. He had no intention to kill the deceased but 'as a result of self defence', he stabbed the deceased on the chest, which caused his death. He was praying for leniency from the court and was asking the court to give him a non-custodial sentence, and was stating that he would never repeat the offence again.

9. In a social inquiry report prepared and filed in court on 20th November 2018 by the Probation Office, Kericho, it is noted that the accused has no criminality, but that he displays a few anti-social behaviours related to alcohol use and abuse. He was remorseful and regretted causing the death of the deceased, which occurred when he tried to defend himself after the deceased accosted him.

10. I have considered the facts of this case as presented by Learned Prosecution Counsel, Mr. Ayodo. I have also considered the mitigation on behalf of the accused, as well as the contents of the social inquiry report.

11. The facts indicate that the accused stabbed the deceased in self defence. The social inquiry report also indicates that the accused stated that he was remorseful for having stabbed his childhood friend in self-defence.

12. However, I note that after the altercation in the bar, the deceased had got onto a boda boda (motor cycle) to ferry him home. The facts indicate that the deceased picked a quarrel with the accused over a bag that the deceased was carrying on his back. The same facts, however, state that it was the accused who pulled the deceased from the motor cycle, telling him that he had taken his bag. It is further stated in the facts as set out in the plea agreement that the deceased was threatening the accused with a panga, shouting that he would slash him to pieces.

13. I have some misgivings about the accuracy of the facts presented in this case, and the claim that the accused acted in self defence. The deceased had, from the facts, sent one Gideon to get his panga so that he could walk home with it. He did not therefore have a panga at the time he was fighting with the accused. I note also that it was the accused who pulled him from the motor cycle that he had boarded, alleging that he had taken his bag, and that the accused stabbed the deceased in the back.

14. The accused has saved the court's time in entering into a plea agreement with the state. The facts, however, do not quite disclose a person who took the life of another in self defence. Perhaps the accused and the deceased were fighting over the bag that the deceased had, but the fact that the accused pulled the deceased from the motor cycle, that he hit him on the forehead with the knife, that he then stabbed him in the back with the knife so severely that he caused his lung to collapse and severed the deceased's vena cava does not quite create the image of a person who was acting in self - defence. The facts are actually distressingly indicative of a person intent on murder, particularly given that the accused and the deceased had only a short time prior to the killing had an altercation and a fight over a woman.

15. In the circumstances, and notwithstanding that the accused is a first offender, I find that he merits a custodial sentence. As a medical practitioner who, as indicated in the social inquiry report, was working as a nurse at the Sosiot sub-county hospital, he was fully aware of the damage that a stab wound to the back would do. He was heedless of the life of the deceased, and of his duty as a medical practitioner to preserve, rather than endanger or take away a life. The maximum penalty for manslaughter is life imprisonment. However, I take into account that the accused entered into a plea agreement with the state, and reduced the time and expense of a full trial.

16. Accordingly, I hereby sentence him to twenty years imprisonment. He has a right of appeal against sentence within 14 days of today.

Dated Delivered and Signed at Kericho this 21st day of November 2018

MUMBI NGUGI

JUDGE

In the presence of:

Nelson Kenei – Court Assistant

Ms Keli- For Director of Public Prosecutions

Mr. Koske for accused