

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

HC CRIMINAL NO.27 OF 2015

REPUBLIC.....PROSECUTION

VERSUS

PHILEMON KIPRONO SIELEACCUSED

SENTENCE

1. The accused, Philemon Kiprono Siele 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 10th day of December 2015, he murdered Eliud Kipketer Siele *alias* Robert. He pleaded not guilty to the offence, but pursuant to a plea bargain agreement with the state, he pleaded guilty to the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code.

2. The facts of the case as presented by Ms. Mwangi were that the deceased Eliud Kipketer Siele *alias* Robert and the accused, Philemon Kiprono Siele were brothers. On the 9th day of December, 2015, the accused and the deceased were in a circumcision camp. They disagreed and fought after the deceased became furious when the accused failed to return a traditional straw used to take local brew (busaa) that the deceased had given him to use. They were separated and each went to their own house.

3. The following day, the 10th of December 2015 at around 5.00 a.m the deceased passed by the accused's house. He hurled insults at the accused calling him "*uncircumcised*", and he hit the door to the accused's house forcing the accused to wake up and open it. The accused went outside. He asked the deceased to leave him alone but the deceased went on abusing the accused, calling him a demon and stating that he would kill him. The deceased was armed with a piece of stick which he was threatening to hit the accused with. The accused got highly irritated, grabbed the piece of stick from the deceased, and used it to hit the deceased on the head. The deceased fell down and started groaning in pain.

4. The deceased was given first aid by the spouses of the accused and the deceased, as well as neighbours who had been attracted by the screams of the women. He was then taken to rest in his house. On the 11th of December 2015 the deceased was taken to Kericho District Hospital where he was treated and referred to seek scanning services elsewhere. He was taken to Sinendet Building in Kericho town for the scan but he died before the scan was conducted. The body was taken to Kericho District Hospital mortuary.

5. The matter was reported at Sondu Police Station where police officers visited the scene and carried out preliminary investigations. The accused was arrested by members of the public and escorted to Sondu Police Station.

6. A post mortem conducted on the deceased's body on 14th December 2015 by Dr. Gilbert Langat established that the cause of death was head injury secondary to blunt trauma leading to epidural haematoma and skull fractures.

7. The accused was medically examined on 14th December 2015 by Dr. Abdala of Kericho District Hospital and found fit to stand trial. He was later charged with the offence of murder, which has been reduced to manslaughter pursuant to the plea agreement with the state.

8. In mitigation, it was submitted on his behalf by his learned counsel, Mr. Sang, that he is remorseful and deeply sorry for the events that led to the demise of the deceased. That there was no malice aforethought,

the deceased participated and initiated the events that led to the crime, and the accused only acted in self defence. According to Mr. Sang, the accused and the deceased were brothers and both had difficult personal histories having grown up in very poor families. The accused has a wife and family who solely depend on him, and he prayed that the court should impose a non-custodial sentence, noting that the accused has been in custody all along as he has been unable to secure a surety.

9. A social inquiry report was prepared and filed in court by the Probation Officer, Kericho. What emerges from the report is that the accused and deceased were brothers and friends, and that they had no grudge between them. However, it would appear from the report that the two brothers were given to abuse of alcohol, and that the accused turned violent when drunk. In the incident which resulted in his brother's death, it is apparent that even though he may not have intended to cause his death, he used such force as was likely to result, if not in death, at least in serious injury. The post mortem report on the deceased indicates that he not only suffered an epidural haematoma and skull fracture which resulted in his death, but that he had also suffered three broken ribs.

10. The accused has pleaded for a non-custodial sentence. However, I am satisfied that in the circumstances of this case, a custodial sentence is merited. In meting out sentence on the accused, I take into account that he has been in custody for the last one year, but that it is necessary for him to discharge a debt to society and to have a chance to reflect on his actions and to realize how delicate and fragile human life is.

11. I therefore sentence the accused to serve a term of imprisonment for three years. He has a right to appeal against the sentence within 14 days of today.

12. It is so ordered.

Dated Delivered and Signed at Kericho this 15th day of February 2017.

MUMBI NGUGI

JUDGE