

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL CASE NO. 27 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

JACKSON MUENDO WAMBUA.....ACCUSED

SENTENCE

Jackson Muendo Wambua (hereinafter referred to as “the Accused”), was initially charged with the offence of murder contrary to section 203 and section 204 of the Penal Code. An offer was made subsequently by the Defence counsel to plead to the offence of manslaughter, which offer was accepted by the Prosecution. The Accused thereafter on 22nd June 2016 pleaded guilty to the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The particulars of the offence were that on 25th September 2014 at Nthongoni village, Mukuyuni Sub-Location, Ukia Location in Makueni District within Makueni County, he unlawfully killed Nicholas Muema Mwetha.

On the fateful day, being 25th September 2014, the Accused person employed Nicholas Muema Mwetha (the deceased) and Nzuki Mwangangi to assist him dig holes for planting bananas. They agreed on a cost of 400/= for each person, and the deceased worked on the farm until 4:00 pm when they completed their work. The Accused then paid the deceased and Nzuki Mwangangi Ksh.200/= each. The accused informed the deceased and Nzuki that he had the balance in his phone, and that he would go to Mukuyuni market to withdraw the money and pay them. At 7:30 pm in the evening of the same day, the accused and the deceased met at the homestead of Mathias Mwatha Mwilu. Also present was Muendo Musyimi, Kwango Muswi and George Mwilu among others and they were taking the traditional beer known as Karubuu.

As they were drinking the deceased and Nzioki Mwangangi demanded their money from the Accused, and a quarrel ensued. The deceased started abusing the accused by calling him ‘Nyee’ which means testicles in Kikamba language. The deceased and accused who were both drunk started fighting, and the Accused pushed the deceased to the ground and hit him with a brick on the head several times, whereupon the deceased became unconscious.

The accused and the others who were drinking left the homestead, and left the deceased with his father Mathias Mwatha Mwilu. who called the police. The police upon arrival confirmed that the deceased had passed on. A post-mortem was conducted on 2nd October 2014 and the cause of death was established as cardiopulmonary arrest secondary to a severe head injury with intracranial bleeding, as a resulting of blunt trauma to the head.

The Accused admitted the above-stated facts that were narrated to the Court by Ms. Rono, the learned Prosecution counsel, who also produced the post-mortem report as the Prosecution’s Exhibit 1. The Accused was convicted of the offence of manslaughter on his own plea of guilty, and I am now called upon to pass sentence bearing in mind that the maximum sentence for the offence of manslaughter is life imprisonment under section 205 of the Penal Code.

Mr. Muumbi, the learned Defence counsel, sought for leniency in mitigation due to the fact that the Accused was provoked by the deceased who abused him. Further, that there appears to have been a good relationship between the Accused and deceased, as the Accused had given him work to do and the incident would not have occurred were it not for the provocation. He submitted that the Accused is

remorseful and regrets his action which led to the death of the deceased, and pleaded for a non-custodial sentence.

The prosecution counsel Ms. Rono submitted that it is clear from the facts that the Accused and the deceased started fighting due to provocation by the deceased. Further, that they were also all drunk and the fight resulted from money owed to the deceased. Lastly, that the family of the deceased and accused had reconciled under Kamba customary.

The Court also called for a pre-sentencing report from the Probation Service, which report was filed in Court on 2nd August 2016. It was noted therein that the Accused is 34 years old, a first offender and had not been involved in any criminal activity, and is remorseful for the offence he committed and seeks a lenient sentence. The probation report noted that the families of the deceased and the Accused are neighbors, and the victim's family when interviewed expressed forgiveness for the Accused, and that both families have engaged in a reconciliation process and agreed on the compensation to be paid under Kamba customary law. The report noted that there is adequate socio-economic and psycho-social support to warrant consideration of a non-custodial sentence.

I have considered the facts of the case and the circumstances, in which the deceased's death occurred, as well as the mitigation and pre-sentencing report by the probation service. It is evident that while the Accused may not have had the intention of killing the deceased, he would have known that his acts of hitting the deceased on the head with a brick would cause him grievous harm. The offence for which he has been convicted cannot therefore go unpunished in the interests of justice. The Court also notes in this regard from the facts and pre-sentencing report that the Accused person left the scene of crime and was at large for three months before his arrest.

I therefore find that a non-custodial sentence will not be appropriate in the circumstances of this case, and I accordingly sentence the Accused to two (2) years imprisonment.

Right of Appeal explained to the Accused.

Orders accordingly.

DATED AND SIGNED AT MACHAKOS THIS 13TH FEBRUARY 2017.

P. NYAMWEYA

JUDGE