

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL CASE NO. 36 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

PETER NGUGI MWAURA.....ACCUSED

SENTENCE

The accused person was initially charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The accused pleaded not guilty and the case went through a full trial by the prosecution calling a total of eight (8) witnesses to establish the offence under section 203 of the Penal Code.

At the close of the prosecution and defence case I considered the evidence and did arrive at a conclusion that the evidence establishes the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. Upon conviction this court set out a date for sentencing hearing.

During the hearing the following factors emerged. The pre-trial report by the probation officer had been called for by this court. In the report the accused is said to have been born 35 years ago. The accused parents passed on sometime back. He left Muranga for Loitokitok in search of work in 1989. The community who were interviewed talked well of the accused character as well behaved and hardworking. The community was only taken aback with the occurrence of this incident involving the accused where life was lost. They were willing in rehabilitation of the accused should the court deem fit. There was an initial consideration of the victim offender mediation involving the mother to the deceased but the same never materialized. Ms Moinket submitted on mitigation that the accused is remorseful. Learned counsel further submitted that the unfortunate incident involved the accused and his deceased wife. He regrets the circumstances of the offence and going by the presentence report a non-custodial sentence will be appropriate. The senior state counsel urged this court to mete out a custodial sentence due to the gravity of the offence. Learned senior prosecution counsel confirmed to the court that the accused be treated as first offender as he had no previous convictions to make reference to.

In considering and exercising discretion to pass sentence against the accused I take cognizance that the offence of manslaughter is a serious offence. The sentence prescribed under section 205 of the Penal Code is that of life imprisonment. There is no doubt that this murder arose out of a domestic violence situation. The circumstances in which the deceased died have been weighed carefully and the exceptional circumstances arising therein where later she succumbed to death. The accused is described as a first offender with no previous convictions related with this offence or any other crime.

The point I ponder at this stage is whether the seriousness of this offence requires me to impose a life sentence or whether I go for a fixed term in respect of the accused. I have therefore anxiously considered the submissions on mitigation. The presentence report. The accused is a first offender and that he has been in custody since 30/12/2011 pending trial. The provisions of section 332 (1) of the Criminal Procedure Code has been factored in this proceedings on sentence.

Taking all those matters and materials placed before me I still hold this offence is of a serious nature which calls for a custodial sentence. If the provisions of section 332 (2) were to be ignored I will have sentenced the accused to a term imprisonment of eight (8) years. However given the statutory imperative I hereby consider the 5 years in completing the sentence. I will therefore sentence the accused to three (3) years custodial sentence of imprisonment. 14 days right of appeal explained.

Dated, delivered and signed in open court on 9/2/2017.

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R. NYAKUNDI

JUDGE

Representation:

Ms Moinket for accused present

Mr. Akula for Director of Public Prosecution

Mr. Mateli Court Assistant

Accused present