

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

HIGH COURT CRIMINAL CASE NO.26 OF 2015

REPUBLIC.....PROSECUTION

VERSUS

W K K.....ACCUSED

SENTENCE

1. The accused, WKK, is a minor aged 16 years. He was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The facts of the case were that on the 8th of December 2015 at [particulars withheld] Township, he murdered one Daniel Maritim.
2. The accused offered and the state accepted his offer to plead to the lesser charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code. Pursuant to a plea bargain agreement dated 10th November 2016, the accused pleaded and was convicted on his plea to the charge of manslaughter. The state indicated that the accused was a first offender.
3. In mitigation, Mr. Motanya for the accused stated that the deceased was the accused person's uncle. He had found the deceased assaulting his mother, who was the deceased's sister. He had gone to his mother's defence, as a result of which his uncle had died, He was remorseful and was pleading with the court to find his case fit for a non-custodial sentence so that he can pursue his education. He regretted the action of going to assist his mother and causing the death of his uncle, and that given his age, he would not have foreseen that the weapon he used would cause the death of his uncle.
4. The facts of the case as read to the court by Ms. Keli, Learned State Counsel, were that the deceased, Daniel Maritim, was the maternal uncle of the accused, being the brother of his mother, JCB. On the 8th of December 2015 at around 10.00 a.m the deceased went to [particulars withheld] Trading Centre where his sister, used to sell cereals. She had earlier given the deceased Kshs.2,000 to deliver some maize to her. Upon arrival, the deceased asked his sister to return the maize he had already delivered to her. He grabbed her by the neck and told her that he had been tracing her so that he could kill her. He hit her several times with his fists on the neck and back and she fell down unconscious.
5. When the accused person was informed that his mother was being assaulted by the deceased, he rushed to the scene where he found the deceased still assaulting his mother as she lay on the ground. He asked the deceased to stop assaulting his mother, and the two got into a heated argument and started fighting. The accused then armed himself with a panga and cut the deceased twice on the head and he fell down unconscious, bleeding profusely. The accused's mother was rushed to Kaplelit Hospital where she was admitted for 5 days, while the deceased was taken to St. Vincent de Paul's Mission Hospital in Muhoroni where he was pronounced dead on arrival.
6. A post mortem on the deceased carried out on 11th December 2015 by Dr. Victor Rono of St. Vincent de Paul's Mission Hospital established that the cause of death was severe haemorrhage and head injury as a result of two cut wounds. The state produced the post mortem report in evidence. A medical examination on the accused person was also carried out, and he was found fit to stand trial. A medical report to this effect was also presented to court.

7. A social inquiry report was prepared in respect of the accused in this matter. In the said report, the Probation Officer notes that the accused is a form 3 student and a minor now aged 17. He had gone to the defence of his mother when she was attacked by the deceased. He is one of 11 children of the deceased's sister. The Deputy Principal of his school says he is a disciplined student.

8. I have considered the facts presented before me and the mitigation offered by the accused. The accused is a minor, and the deceased is his uncle whom he fatally injured when he found him assaulting his mother. I have also considered the Social Inquiry Report prepared by the Probation Office. I note that the deceased was the aggressor in this case, that he attacked the accused person's mother, and that when he was asked to stop the assault, he got into a fight with his nephew, which resulted in the fatal injuries that he sustained. It is a sad thing that a man's assault on his own sister leads to his death at the hands of his nephew, a minor who came to the defence of his mother, and will doubtless carry the burden of the loss of his uncle for life.

9. In the circumstances of this case, and taking into account the age of the accused at the time of commission of the offence, it is my view that a non-custodial sentence is merited.

10. In the circumstances, I hereby sentence him to serve a term of three years' probation, to be supervised by the Probation Officer, Kericho County.

11. Orders accordingly.

Dated, Delivered and Signed at Kericho this 1st day of February 2017.

MUMBI NGUGI

JUDGE