



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

HC CR. NO.11 OF 2015

REPUBLIC.....PROSECUTOR

VS

GEDION CHERUIYOT LELGO.....ACCUSED

SENTENCE

1. The accused 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 20th day of May 2015, at Kaptebeswet Village in Kericho District within Kericho County, he murdered Edwin Kiprono Cheruiyot.
2. The accused pleaded not guilty to the charge and the matter was scheduled for trial. However, pursuant to a plea agreement entered into between the state and the defence, the accused pleaded guilty to and was convicted on his own plea of the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The state indicated that the accused could be treated as a first offender.
3. The facts of the case as presented by Ms. Keli, Learned State Counsel, were that on the 20th day of May 2015 at Kaptebeswet Village at around 8.00 a.m, the accused left his home to go to his business at Cherote Shopping Centre. He left his place of work at around 8.00 p.m. and went to an illicit brew den at Nyagacho Centre where he drunk chang'aa and smoked cannabis until 9.30 p.m when he left. He passed by his neighbour's home, Simon Kirui to collect his CPU as his work involved photocopying, typesetting and service of software machine. He stayed at his neighbour's home, where he also had supper, until 10.00 p.m. when he left for his home.
4. At his home, he was surprised to find that the door was not locked, and he stopped at the door. He heard voices coming from the bedroom. He decided to walk silently to his bedroom as he was not sure what was happening but the electricity light was on in the bedroom. He pushed the door open and found his wife, Faith Chepkemoi Lelgo and the deceased having carnal knowledge on the accused's matrimonial bed. As the accused was trying to close the door, the deceased jumped on him but the accused pushed him away. The accused was highly agitated by the situation and before the deceased could attack him further, the accused reached for a panga that was near his bed and slashed the deceased several times. The accused's wife fled into darkness.
5. The accused then carried the deceased who was now bleeding profusely to the nearby main road to take him to hospital. On reaching the road however, he discovered that the deceased was dead. He left him by the side of the road and fled to his uncle's place in Kipkelion.
6. On 21st May 2015, at around 8.00 a.m, some villagers noticed a dead body by the roadside. There was also a blood trail leading to the accused's house.

7. The matter was reported to Nyagacho Police Station and the police carried out investigations. The body was taken to the Kericho District Hospital where a post mortem was carried out on the deceased on 25th May 2015 by Dr. Edwin Kosgei. The cause of death was established as asphyxia secondary to aspiration of blood from cut wound on the neck.

8. The accused was later arrested at Kipkelion and taken to Nyagacho Police Station, and later charged with the offence of murder which was later reduced to manslaughter pursuant to the plea agreement. A copy of the post mortem report on the deceased, as well as a report on the accused person's mental state and capacity to stand trial dated 25th May 2015, were produced in evidence.

9. In mitigation, Mr. Koskei, Learned Counsel for the accused, stated that the accused is a young man of 27, married with two children. He had reflected on his actions in the two years he had been in custody and realized that what he had done was wrong before the law and his Maker. He had not intended to kill the deceased but was highly provoked when he found the deceased and his wife having carnal knowledge on his matrimonial bed. Counsel pleaded that the accused be given a non-custodial sentence so that he can take care of his children who had been left by his wife after the occurrence of this incident.

10. A social inquiry report was prepared by the Probation Office, Kericho. The report notes that the accused is a first offender and is remorseful for his actions.

11. I have considered the facts of the case before me and the mitigation offered by the accused through his Counsel. I note that he is a first offender, and that he committed the offence when he found the deceased having carnal knowledge with his wife. It is argued that he was highly provoked, that he is remorseful, and that he needs to take care of his two children who were left by his wife after the incident.

12. While I do not discount the emotions that he states he went through when he found his wife with another man, it is still not to be forgotten that a human life was lost, that of a man who, like the accused, was a father of two children. It is in my view necessary that the accused serves a term of imprisonment so that he can have time to reflect on his actions and appreciate that human life should not be taken so lightly, with so little thought.

13. Noting, however, that this offence was committed in May 2015 and that he has been in custody ever since, I sentence him to imprisonment for a term of three (3) years.

14. The accused has a right of appeal against sentence within 14 days of today.

15. It is so ordered.

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

MUMBI NGUGI

JUDGE