



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO. 95 OF 2016

REPUBLIC PROSECUTOR

VERSUS

JOSEPH KARIUKI NJUGUNA ALIAS KARIS..... ACCUSED

SENTENCE

1. The accused, Joseph Kariuki Njuguna alias Karis (“Accused Person”), was originally charged with murder contrary to section 203 as read together with section 204 of the Penal Code. The particulars in the charge sheet were that the Accused Person murdered Solomon Mbuthi Mwangi together with others on 11/11/2016 at Karakuta Coffee Estate in Juja Sub-county within Kiambu County.
2. The Accused pleaded not guilty to the charges. The Defence Counsel, Mr. Njuguna immediately indicated to the Court that he would be pursuing a plea agreement with the Prosecution. Following negotiations between the parties, on 31/01/2017, they appeared before me with a Plea agreement. On this day, the Accused pleaded guilty subject to the plea agreement. The plea agreement reduced the offence charged from murder to manslaughter. The Court approved the Plea Agreement, and, after duly complying with sections 137D and 137H of the Criminal Procedure Code, convicted the Accused on his own plea of guilty on the charge of manslaughter.
3. The agreed facts as stated in the Plea agreement of the case are quite lengthy. I will summarize them for purposes of this ruling.
4. The Accused Person was approached by an acquaintance, Damaris, by phone. He was promised a good contractual job and told that a man called Njiru would call him with details. That said Njiru called as promised and they organized for a meeting – with Njiru and Damaris present. That was when the Accused Person learnt that the promised “job” was, in fact, a job to kill; to commit homicide. The victim was to be a lady – an Mpesa agent who was working at a certain shop in Kiria-ini. The sin the would-be victim had committed was, ostensibly, to have had an affair with a married man. The offending married man, the Accused Person would later learn, was the Deceased herein.
5. Later on in the plot, the Accused Person was introduced to the “owner” of the job – a lady; a Mwalimu – who he later learnt was the wife of the Deceased. Another man – Gikuyu – who was previously known to the Accused was also brought into the picture.
6. During a “reconnaissance” tour to the Mpesa shop the following day, the Accused Person discouraged the execution of the scheme on account of the proximity of a bank and the Police Station – with all their concomitant cameras and police presence. He received his share of the “deposit” amount of Kshs. 100,000/= paid by the Lady Mwalimu and they all agreed that he will be re-activated once the Lady Mwalimu had thought of a different “way” to achieve her goals.

7. The next call came more than four months later when the Accused was alerted that the “job” was well nigh. The actual appointed day was 04/11/2016. The band of four – the Accused Person; Gikuyu; Njiru and the Lady Mwalimu met up and the Accused was told the plan for the first time: They would go to the Deceased’s official residence at Kiria-ini; the Accused Person and Gikuyu would remain hidden in the car; the Lady Mwalimu would drug the Deceased with some drug (“mchele”) she had with her; then, when the drug had taken effect, they were to enter the house and use a sisal rope to strangle the Deceased. As fate would have it, the plan failed: the drug did not have the effect it was to have on the Deceased and the Lady Mwalimu aborted the plan.

8. Two days later, Njiru called the Accused with instructions to the Accused Person that that was the day the plan would finally be executed. The Lady Mwalimu called him shortly thereafter and told him exactly where he needed to go. They later all met at a place called Urithi along the Thika Superhighway. The Lady Mwalimu had driven the same vehicle she had used the previous time they had met in Kiria-ini. This time, however, her husband, the Deceased, was seated on the front passenger seat. He appeared to be visibly under the influence of some drug and was dozing on and off. Gikuyu was late to arrive. Meanwhile, apparently, the Lady Mwalimu wanted the Accused Person to proceed to the vehicle and hit her husband to death. The Accused declined and, it would appear that an angry exchange between the Accused Person and the Lady Mwalimu ensued.

9. Gikuyu arrived shortly thereafter and the original plan was rebooted. The plan was for the Deceased to be duped to believe that they were going to view some land which was under consideration for purchase. This allowed the two men – the Accused Person and Gikuyu – into the vehicle as the apparent land dealers or brokers. Once all four: the Lady Mwalimu as the driver; the Deceased on the passenger seat; the Accused Person seated in the back passenger seat behind the driver and Gikuyu seated in the back passenger seat behind the Deceased, the vehicle took off towards the coffee farms and away from the highway. When they got to a wooded area, the vehicle stopped. Gikuyu, then, suddenly took a sisal which was under the car seat, lunged at the Deceased who was seated right in front of him and suddenly put it around his neck in a brutal attempt to strangle him. The Deceased tried to escape but the car lock jammed and he remained trapped in the car. This allowed Gikuyu time to tighten the noose to a point where the Deceased was helpless.

10. It was at that point that Gikuyu instructed the Accused to help him carry the now almost lifeless body of the Deceased from the car – and carried it further into the bushes. There, they made him sit up; tied his hands behind his back; put gunny bags on his head and body and tied the rope on his neck to a tree. They then left him there. It is unclear whether the Deceased had breathed his last by the time the Accused Person and Gikuyu walked away from him.

11. Thus did the popular Principal of Kiiru Boys High School meet his traumatic and heart-rending death. Thus did the loved father and family man breathe his last: hanging by a tree; a smelly gunny bag over his head; stripped of his shoes; hands tied behind his back; involuntarily drugged and incapable of fighting for his life. By all accounts it was a murder most foul.

12. The Court invited the family of the victim to make a statement if they were so minded. They filed a Victim Impact Statement recorded by Ms. Lucy Wangari Mwangi who is a sister to the Deceased. The Statement expressed the anguish of losing the Deceased who was the father-figure in the family after both parents passed on. The statement describes the Deceased as the pillar of the family who glued together the siblings providing leadership – both on social, emotional as well as economic affairs. The sister explains that the death of the Deceased in the circumstances that it did has deeply affected her – to the extent that she has physical symptoms like seizures at night.

13. However, Lucy is appreciative to the Accused Person for the information he provided which led to discovery of what happened in the case. She thanks him for his cooperation with the Police. Regarding sentence, she and the family would like the law “to take its course.”

14. Fr. Gerishon Kuria, another relative, addressed the Court on behalf of the family of the Deceased. He was also quite appreciative that the information provided by the Accused Person provided closure to the

family about what happened to the Deceased. He exhorted the Court to be “merciful” to the Accused because he provided crucial information and was cooperative with the Police. Mr. Mathenge, the Victim’s Counsel, echoed these sentiments and stated that the cooperation of the Accused Person provided very crucial information that will be used to bring the “real” perpetrators of the crime to justice.

15. The Accused Person was succinct in his address to the Court:

I would like to say that it was never my plan to kill. It was the wife [to the Deceased] who said the Deceased should be killed. I never saw the Deceased dying. I request for non-custodial sentence. I am quite traumatized by the death.

16. On the Accused Person’s behalf, Mr. Njuguna – his Counsel -- informed the Court that the Accused has reformed. He has found God while in custody. He is now an active member of the Prison’s Christian Union. Mr. Njuguna told the Court that the Accused Person is remorseful. He is sorry for the role he played in the incident that led to the death of the Deceased. He was actuated by the need for money; not the desire to do harm to the Deceased and he regrets his actions.

17. Mr. Njuguna urged the Court to consider that the Accused Person had tried to frustrate the carrying of the scheme to kill the Deceased and that he has been cooperating with the Police because his conscience was clear that it was wrong. He cooperated all along and never wasted the Court’s time before admitting guilt. He has agreed to testify against the “real” perpetrators. He is a young man with a wife and a 7-year old son. Mr. Njuguna urged the Court to consider non-custodial sentence.

18. Ms. Mwaniki, for the Prosecution, informed the Court that the Accused Person is a first offender. She later filed the records to demonstrate that. She reiterated that the Accused Person had deeply cooperated with the investigators and the Prosecution in the investigations into the murder of the Deceased and that the Accused Person had agreed to testify in the trial of those charged with the murder of the Deceased. Ms. Mwaniki urged the Court to consider minimal sentence given all these considerations and the fact that the Accused Person is remorseful.

19. I have considered all the factors carefully. On the one hand, I have considered how brutal the murder of the Deceased was. This was a murder so brutal and blood-chilling that it captured the attention of the nation. The murder of the Deceased, a much loved family man and leader in the education sector in Murang’a County where he was a long serving Principal, was cut short in a most savage, callous and cold-blooded way. From the facts as agreed by the Parties, after being drugged, he was strangled with a rope, forced to sit up before dying, had smelly gunny bags put over his head, bosom and legs and then hanged on a tree by the neck.

20. The family of the victim has expressed its appreciation to the Accused Person for providing crucial clues and information during the investigations. So did the Prosecutor. They requested that I take that into consideration in pronouncing my sentence and I have done so.. Other mitigating circumstances suggested include the following:

- a. That the Accused Person played a minor role in the overall scheme that resulted in the death of the Deceased;
- b. That the Accused Person is a first offender;
- c. That the Accused Person is very remorseful; and
- d. That the Accused Person pleaded guilty at the earliest opportunity.

21. I find all these five mitigating circumstances as proven and I will take them into account in determining my sentence.

22. It appears from the agreed facts that the Accused Person did not directly participate in the planning

and execution of the murder. Indeed, he is presented as a hesitant accomplice who was “in there” for the money. He tried at various stages to frustrate the murder scheme – from suggesting outright that it would be impossible to kill the first target of the scheme – a certain woman at an Mpesa shop in Kiriaini to refusing to actively take part in the killing of the Deceased.

23. However, it is also a fact that the Accused Person had a lot of opportunities to prevent the heartless murder that eventually occurred. Over a period of more than five months, he knew that the perpetrators were planning to commit murder – and for a period of over two months, he knew that the Deceased was being targeted. He was even privy to the botched attempt on 04/11/2016 when, apparently, the Deceased did not succumb to the drug used to spike his tea at his official residence at Kiru High School. Two days later, the plan to drug him apparently succeeded and the brutal homicide followed.

24. Hence, while the Accused Person is remorseful now – and I accept that he is demonstrably so – it is troubling that not once over the more than five months when the evil plan was afoot, the Accused experienced a pang of conscience instructing him to bail out, report the scheme or more actively thwart it. While the Accused Person was not the master planner of the crime, it is clear that he knew about the intricate planning for the planning and could have stopped it. The savagery of the attack on the innocent man who was lured from his own home is noteworthy.

25. In addition, I find the following aggravating circumstances:

a. The homicide was committed with particular brutality aimed at humiliating the Deceased before his death – including by dressing him in smelly gunny bags and leaving him hanging by a tree. I find this to be the use of grossly inhuman and degrading means of committing the homicide which is an aggravating circumstance;

b. This was an organized crime committed by a group – and not a solo effort;

c. The Accused Person participated in the scheme because of the high level of profit he wished to generate from the unlawful killing of another human being. The Accused Person literally sold his soul for pieces of silver;

d. The use of a weapon – a rope – to injure the victim;

e. The very serious psychological effects the death will have on the Deceased’s family – including his children and his siblings.

26. If this offence had been committed in a jurisdiction which distinguishes between simple manslaughter and aggravated manslaughter (See, for example, the New Jersey Manslaughter Statute-**N.J.S.A.2C:11-4**; or the Oregon Manslaughter Statute, **Oregon ORS 163.118** or the **American Law Institute Model Penal Code (Official Draft, 1962), § 210.2(1)(b)**), the actions by the Accused Person here would clearly be classified as aggravated manslaughter.

27. A person is guilty of Aggravated Manslaughter if they recklessly cause the death of another person under circumstances manifesting extreme indifference to human life. Hence, while there was no particular intent or premeditation (malice aforethought) to kill the deceased, aggravated manslaughter happens when the perpetrator acted in wanton disregard of the consequences of his action to human life. I believe this was the case here. Other jurisdictions aptly term this kind of homicide as “depraved heart” killing.

28. Judge Moylan of the Maryland Supreme Court perhaps best defined this kind of homicide in ***Debetten court v. State, 48 Md. App. 522, 530, 428 A.2d 479, 484 (1981)***:

It [‘depraved heart’ killing] is the form [of homicide] that establishes that the willful doing of a dangerous and reckless act with wanton indifference to the consequences and perils involved, is just as blameworthy, and just as worthy of punishment, when the harmful result ensues, as is the express intent to kill itself. This highly blameworthy state of mind is not one of

mere negligence.... It is not merely one even of gross criminal negligence...

It involves rather the deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not. The common law treats such a state of mind as just as blameworthy, just as anti-social and, therefore, just as truly murderous as the specific intents to kill and to harm.

29. I have gone into this little bit of comparative detour to demonstrate that what the Accused Person has been convicted of is a serious offence – one to which a non-custodial sentence is inappropriate given the circumstances. Indeed, as I have outlined above, there are many aggravating circumstances here which outweigh the mitigating circumstances. Above all, wanton disregard to human life, as shown by the Accused Person must attract a custodial sentence at the very least.

30. What, then, is the appropriate sentence for this aggravated manslaughter? In my comparative jurisprudence sojourn, I noted that in many jurisdictions “aggravated manslaughter” or “depraved heart killing” attracts a minimum sentence of anywhere between ten (10) years and 15 years imprisonment.

31. In the circumstances of this case as outlined above, after weighing all the mitigating and aggravating circumstances and after taking into consideration the views of the victim’s family and the prosecution and the mitigation by the Accused Person, I will proceed to sentence the Accused Person to seven (7) years imprisonment.

32. Orders accordingly.

Dated and delivered at Kiambu this 9th day of March, 2017.

JOEL NGUGI

JUDGE