



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
HIGH COURT CRIMINAL CASE NO 7 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

PETER KURIA KIARIE.....ACCUSED

SENTENCE

1. The accused herein **PETER KURIA KIARIE** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** the particulars of which were that on the 30th day of December, 2012 at about 6.30 p.m. at Karatu sub-location in Gatundu South within Kiambu County jointly with others not before the court murdered **JOHN KARANJA CHEGE**.

2. On 30/1/2017 Justice R. Lagat-Korir found the same guilty and convicted him of the lesser offence of manslaughter contrary to **Section 202** of the Penal Code and had this to say:-

“24. In the present case there was ample evidence of a fight between the accused and the deceased. It was established that the accused did indeed hit the deceased with a piece of wood as testified by PW1. The post mortem confirmed that the deceased died of head injury caused by a blunt object. The circumstances leading to the fight and the death however cast doubt in my mind on the intention of the accused. The evidence clearly shows that the accused was insulting his mother (PW3) and a neighbour (PW7). He had no quarrel with PW1 and the deceased. PW1 and the deceased went into the accused compound on a noble mission to stop the accused from further insulting the elderly people to end nuisance. It is not clear from the evidence what transpired before the accused hit the deceased. There might have been an altercation or just a swift angry reaction of the accused to persons who had entered his homestead. I doubt that the accused had planned to end the life of the deceased. No motive for such act was presented by the prosecution.”

3. This matter was thereafter referred to me for mitigation and sentence under the provisions of Section 200 (2) as read with Section 201 (2) of Criminal Procedure Code Justice Korir having ceased to exercise jurisdiction herein and in mitigation the accused through his Advocate Mr. Oundo submitted that the accused is a retired police officer and is a first offender. It was submitted that throughout the period he had been in custody he has had serious health conditions for which he had undergone operations.

4. It was submitted that his home was destroyed by fire and his wife and children taken to Thika town where they are living in the street being assisted by the accused first born daughter. It was stated that the accused was sorry for his action and pleaded for non-custodial sentence to enable him pick up his life having been in custody for a period of three years. The state provided no previous record on the accused

and asked court to treat him as a first offender.

PRE-SENTENCE REPORT

5. To enable the court pass an appropriate sentence herein, I ordered for pre-sentencing report which has been presented and in which it was stated that on the material day the accused who was in a get-together function with family members went to the local bar to have drinks with some friends. He arrived home late, started exchanging words with neighbours and the deceased went to his compound to accost him and a fight ensued leading to the death of the deceased.

6. It was stated that the same was remorseful and blames his then alcoholic habit for the offence. On victim impact it was stated that the father of the victim and his brother were reached on phone but failed to present themselves for interview. It was stated that the wife and the older children of the accused indicated that their house was set ablaze after the incidence and they were sent away by hostile neighbours who warned them never to go back due to land related issues which according to family members was not divided fairly by the offender's father. It was therefore recommended that the offender having spent five (5) years in custody should be placed on probation during which he will benefit from guidance and counseling towards anger management and improved self esteem.

7. The objectives of sentencing upon conviction is to meet either or some of the following:-

1. Retribution – to punish the offender for his/her criminal conduct in a just manner.
2. Deterrence – to deter the offender from committing a similar offence subsequently as well as to discourage the people from committing similar offences.
3. Rehabilitation – to enable the offender reform from his/her criminal disposition and become a law abiding person.
4. Restorative justice – to address the needs arising from the criminal conduct such as loss and damages.
5. Community protection – to protect the community by incapacitating the offender.
6. Denunciation – to communicate the community's condemnation of the criminal conduct.

8. Having taken into account the circumstances of this case (1) That the offender was drunk and (2) the deceased went to the offender's house uninvited, the mitigation by the offender and the pre-sentencing report, I am of the considered opinion and hold that this is a case where the offender ought to benefit from Rehabilitation. During the period of five years the accused has been in custody the same has been punished enough for the offence herein in addition to the fact that his home was set ablaze by villagers and his family uprooted from their home which I consider to be an adequate punishment for the offence herein.

9. In **Machakos Criminal Case No. 14/2013 Republic Vs Phillip Muthiani Kathima** Justice Mureithi stated that the objective of sentences is primarily to punish an offence and or to reform the accused person in such manner as appropriate circumstances of the case to deter the repetition of the offence by the accused person and others taking into account the moral blame worthiness of the accused, the prevalence of the crime and the situation of the accused himself.

10. Taking into account the fact that the accused has been in custody for a period of four (4) years and having regard to the fact that the accused was convicted of the lesser offence of manslaughter, I hereby sentence the accused to a prison term of four (4) years backdated to 9/1/2013 when the same first appeared in court on condition that the same does not commit any similar offence in future. The accused shall therefore be set free forthwith unless otherwise lawfully held.

11. However the same still retains his 14 days right of appeal against both conviction and sentence.

DATED, DELIVERED and SIGNED at Nairobi this **1st** day of **March, 2017**.

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J. WAKIAGA

JUDGE

In the presence of:-

Mrs. Kinoti for the State

Mr. Karoki for Oundo for the accused

Accused present

Tabitha court clerk