



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL CASE NO. 10 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

STEPHEN SILA WAMBUA MATHEKA.....ACCUSED

SENTENCE

In this case you Stephen Sila Wambua Matheka initially you were charged with two counts namely:

- (1) Murder contrary to section 203 of the Penal Code.
- (2) Attempted murder contrary to section 220 (a) of the Penal Code.

The circumstances and particulars of the offence were restated before this case by the twelve (12) witnesses who testified on behalf of the state. I received the testimonies of the witnesses including documentary evidence and exhibits in support of the charge as advanced by the prosecution under section 107 (1) of the Evidence Act.

In my consideration of the prosecution case and your defence I came to the logical conclusion that the first count of murder contrary to section 203 of the Penal Code was not proved but the death of Mutuku Muhia was unlawfully caused. That brought your actions under the provisions of section 202 of the Penal Code and a verdict of guilty for the offence of manslaughter and subsequent conviction entered against you.

Secondly on the basis of the evidence in respect of count 2 on attempted murder I accepted the detailed case fully presented by the prosecution. In my judgement I found you guilty of the offence of attempted murder contrary to section 220 (a) of the Penal Code and did convict you accordingly.

The brief set of circumstances reveals that you, the deceased Mutuku Muhia and Christine Ndinda were employed in the same establishment at Mashuru township. Having heard the evidence in the entire trial I do not know for certain what caused the violence to start with where the victims of the offence one lost his life while second sustained grievous harm. It was not a response to something said or done by any of the victims which could have necessitated that you arm yourself with a panga, attack the first victim Mutuku Muhia fatally while the second victim Christine threatened attack left her with permanent injuries.

In your own story the injuries which killed the deceased were inflicted by members of the public. All this was discounted due to the overwhelming evidence by the prosecution and the forensic evidence from the pathologist and government analyst. The pathology evidence support multiple injuries to the head, cervical region, right hand, trachea area. These injuries support what you did to one of your co-workers

who succumbed to death. The second victim sustained serious harm to the thorax and upper limbs. It is against this background I will now sentence you for the counts.

I have heard the plea on mitigation by Mr. Onchiri the defence counsel on your behalf. The senior prosecution counsel also in his remarks presented a report that you have no previous record. I therefore treat you as a first offender. The victim impact statement on the first charge came. Miriam Nthenya the sister to the deceased Mutuku Muhia on behalf of the family. The moving statement described the deceased as a hard working young man whom the entire family looked up in support and dependency. The deceased died at a prime age of 37 years. The family siblings whose future left was pegged on financial support lost it by virtue of the premature death caused by your action. It was noted that no apology or victim offender mediation has taken place during the pendency of this case. It is highly significant and aggravating factor the third aspect of this case falls under the mitigation of you being remorseful and regret the offence.

I find no evidence of when such regret or any forgiveness sought to the family of the victim. I take it as a routine statement which has come to be associated with mitigation in criminal cases.

In this case I have already ruled that there was lack of premeditation. The reasons I have already given persuaded me that a lesser offence of manslaughter will apply in this case against you. This court called for pre-sentence report which I accept and the factors factored in on your personal data, the family and community statements about you. All these were towards moving this court to consider home based rehabilitation.

I bear in mind all this in passing sentence. I begin by citing the passage in the Judiciary Policy on Sentencing Guidelines at pg 15:

“The main objectives of sentencing are summed up as retribution, deterrence, prevention, and rehabilitation. These principles act as key pillars to bear in mind which I consider the sentence against you.”

In addition to these principles I am also guided by the judicial precedents on sentencing developed over time by the courts within the commonwealth and our own jurisdictions.

To start with I find the discussion in the case of *Republic v Howells [1999] 1 ALL ER at pg 54* relevant to this case. The court observed:

“Courts should always bear in mind that criminal sentences are in almost every case intended to protect the public, whether by punishing the offender or reforming him and others, or all of these things. Courts cannot and should not be unmindful of the importance public dimension of criminal sentencing and the importance of maintaining public confidence in the sentencing system.”

The exercise of discretion in this matter by the trial court while applying the above principles has sometimes eluded the court in a number of cases in coming up with consistence and predictable sentence on similar cases. In exercising of discretion I am reminded that I need to act judiciously. In determining the appropriate sentence I take into account that section 205 of the Penal Code fixes the sentence for manslaughter as one of life imprisonment likewise to the offence of attempted murder contrary to section 220(a) of the Penal Code. I am also aware that life imprisonment under these two penalty provisions is a discretionary sentence.

In deciding the appropriate period I bear in mind that you are a first offender, the mitigation factors, the seriousness and gravity of the offence. Taking all these factors into account I sentence you as follows:

COUNT 1: Sentenced to thirteen (13) years imprisonment.

COUNT 2: five (5) years imprisonment.

The sentence on count 2 will run concurrently with that of count 1.

14 days right of appeal explained to the Court of Appeal.

Dated, delivered and signed in open court at Kajiado on 8th day of May, 2017.

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R. NYAKUNDI

JUDGE

In the presence of:

Mr. Onchiri for the accused

Mr. Akula for Director of Public Prosecutions

Accused

Mr. Mateli Court Assistant