



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT VOI

CRIMINAL CASE NO 14 OF 2014

REPUBLIC

VERSUS

SAMUEL MBOI PAUL.....1ST ACCUSED

MWANZIA PAUL.....2ND ACCUSED

SENTENCING

1. I have heard the submissions by Mr Oduor for the 1st Accused person and Miss Anyumba for the State on the 1st Accused person's mitigation. The 1st Accused person is a young man aged twenty four (24) years and must have been twenty one (21) years of age at the time of committing the offence. He is remorseful for what transpired on the material date.

2. Mr Oduor has pleaded with this court to consider a non – custodial sentence as the 1st Accused is a young man and the sole bread winner of his elderly parents. Counsel has urged this court to consider that we have a duty to integrate young people back into the society and that the 1st Accused person has already been in custody for three (3) years during which time he has had time to reflect on his actions.

3. On the other hand, Miss Anyumba has submitted that although the 1st Accused person was a young man who was not drunk and was fighting an elderly drunk man, he had a choice of walking away. He did not so do but instead engaged in a fight that led to the deceased's death. She prayed that this court delivers justice to the deceased's family.

4. I note that the Accused person has been in custody since 16th June 2014. It has been almost three (3) years since he appeared in court. He applied for bail which Kasanga J rejected on 11th June 2015. Her argument was that the 1st Accused person was at liberty to apply afresh after the close of the Prosecution case. The Prosecution case was closed on 10th February 2016 and it took almost nine (9) months before the 1st Accused person gave his defence leading to the delivery of judgment today.

5. In essence one can say that he has actually been incarcerated for three (3) years for an offence this court believes could have attracted imprisonment a lower sentence than three (3) years. However, due to the fact that there was no Resident Judge at the High Court of Kenya Voi, it has taken this long to hear and determine the case herein.

6. It is the view of this court that a lower sentence would have been sufficient to punish the 1st Accused person as he was young and impressionable and was likely to make poor choices especially under the influence of alcohol and after being provoked, by the deceased.

7. It would be a great travesty and miscarriage of justice to penalise him heavily. It is true that the deceased passed away but this was due to a fight. There was no malice aforethought on the part of the 1st Accused person and he actually did not run away from the scene of the incident. Instead, he assisted in placing the deceased at the verandah so that he could not be rained on. The deceased was an elderly man who also made bad choices by engaging in a fight with a young man.

8. Bearing in mind the circumstances of the case herein and the fact that the Accused person is a first offender, it is my considered view that a non-custodial sentence would be sufficient to give some reparation to the deceased family and also to set him apart from the 2nd Accused person who had also spent three (3) years in custody but who I have found not guilty of the offence of murder or manslaughter.

9. Accordingly, I hereby sentence the 1st Accused person to serve community service for a period of two (2) months at a centre to be determined by the Probation Office at Taveta Sub County. I hereby direct that the 1st Accused person be escorted forthwith to the Probation Office Taveta Sub County so as to comply with this order.

10. Orders accordingly.

DATED and DELIVERED at VOI this 4th day of MAY 2017

J. KAMAU

JUDGE

In the presence of:-

Oduor holding brief for Mrs Isika – for Accused

Miss Anyumba - for State

Josephat Mavu – Court Clerk