



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL CASE NO 17 OF 2014

LESIT, J

REPUBLIC.....PROSECUTOR

VERSUS

STEPHEN BUNNET SIMION.....ACCUSED

RULING ON SENTENCE

1. The accused was convicted of manslaughter contrary to **section 202** of the **penal code** after a full trial.
2. The sentence for the offence of manslaughter is provided under **section 205** of the **Penal Code**. It stipulates that a person convicted of manslaughter is liable to be imprisoned for life.
3. I have considered that the accused was arraigned in court on 10th February 2014 and remained in custody until his release on bond on September 2015. He had therefore been in custody for one year and six months.
4. I have considered that the Prosecution has treated the accused as a first offender.
5. The court thereafter called for a Probation Officers Pre-Sentence Report. The Report was filed on 30th May 2017. That Report is considered. It has a personal back ground of the accused, his attitude towards the offence and a Home Report all on the accused.
6. The Report shows that the accused is 39 years of age, is married with four children all of tender age. He has siblings who depend on him including a mentally challenged sister.
7. The family of the accused gave a positive report about him and speak of his good conduct.
8. The Pre-Sentence Report does not include a victim impact statement. The Probation Officer explains that he was unable to get the investigating officer of this case to lead him to the family of the deceased.
9. I have also considered the submission of Mr. Ochako in mitigation on behalf of the accused. He states accused is aged 39 years and is married with four children and is the sole breadwinner of the family. He states further that the accused has siblings who are wholly dependent on him including a mentally challenged sister. He prays for a non-custodial sentence.

10. I have considered the circumstances of this offence and I take a very serious view of it. The evidence before the court portrays the accused and his colleague PW10 as a well-known squad which when seen on patrol near bus stages sent a clear message to PSV drivers and conductors alike that they must part with some token.

11. What is clear is that the material day was no different. Accused and PW10 were on Spive Duties. They were therefore there to prevent crime and arrest criminal offenders. Even though nothing stopped them from arresting persons with offences other than criminal, they were on a freak of their own, arresting touts and conductors for operating as conductors without PSV uniform and generally creating fear in them including PW2 who was sent away at gunpoint.

12. On the shooting in question the evidence is clear that the accused held a fully loaded pistol, also cocked it ready to shoot when he says he accidentally pressed the trigger and released ammunition which hit and killed the deceased.

13. My greatest concern is not just the negligent handling of the pistol but three other points.

i. That after realizing he shot the deceased, the accused let him fall down to the tarmac and allowed PW1 to continue driving the vehicle. The accused had no concern for the deceased and made no attempt to check on his condition to find out if he could have been taken to hospital to save his life.

ii. The accused did not make a Report of the incident even though as a police officer who was on duty he was fully aware that even where no one is injured any shooting incident must be entered in the Occurrence Book and reported to seniors.

iii. The accused tried to cover up his action by replacing the ammunition he fired with another from unknown source.

14. Especially for these three reasons, I find that a non-custodial will not suffice in this case. I am fully aware that the accused will lose his job after this conviction. That loss is not sufficient punishment for what the accused did in this case.

15. Having carefully considered all these factors, I will sentence the accused to an imprisonment term of 3 years.

16. The accused has a right of appeal against the conviction and sentence within 14 days of today.

DATED AT NAIROBI THIS 8TH DAY OF JUNE, 2017.

LESIIT, J

JUDGE

Order

The defence be supplied with typed copies of the proceedings, judgment and sentence after payment of necessary charges.

LESIIT, J

JUDGE

8/6/17