



REPUBLIC OF KENYA
IN THE REPUBLIC OF KENYA AT KERICHO
CRIMINAL CASE NO.40 OF 2016
REPUBLIC.....PROSECUTOR
VERSUS
N B K.....ACCUSED
SENTENCE

1. The accused, N B K, is a minor aged 15 years at the time the offence with which he is charged before this Court was committed. He and the deceased, G B, aged 24 at the time of his death, were brothers. They were living with their parents in [particulars withheld] in Kipkelion sub-county.
2. On the 10th of December 2016, at about 8.00 p.m, while their father was hosting a ceremony at his homestead to celebrate the initiation of young boys in the village, the deceased started a quarrel with the accused. It appears from the facts placed before the Court that the deceased was aggrieved that their father was building an iron-roofed hut for the accused while the deceased, who was older, was living in a grass thatched hut.
3. The accused told the deceased to ask their parents as they were the ones who were building the hut, which response infuriated the deceased. He slapped the accused and the two got into a fight. They were separated by the people who were present for the ceremony, upon which the deceased rushed into the house and came out in a rage, armed with a kitchen knife, and started chasing the accused around the compound.
4. The accused then picked up a wooden stick which was lying on the ground, which they had been using to thresh maize. The deceased was then disarmed of the kitchen knife. However, before the accused could be disarmed, he had hit the deceased several times on the legs, chest and stomach region and the deceased fell down. The accused was disarmed of the wooden stick, calmed down and left the scene for the main house, while the deceased rose, limped to his hut, then limped to a neighbour's house about 500 metres away from his home, where he spent the night.
5. The following morning, the neighbour informed the parents of the deceased that he had spent the night in his home, and that he appeared injured from the fight of the previous day. His parents went for him, brought him home, gave him food and put him to bed. He was woken up in the evening. He complained of being unwell, and it was decided that he should be given food and his condition would be assessed the next day. When his mother went to wake him up the following day, his condition had deteriorated and he appeared unconscious. He was taken to a clinic known as Jegorar Medical Centre where he died while undergoing treatment.
6. The deceased's body was moved to Kericho District Hospital Mortuary where a post mortem was

conducted by Dr. Wesley Rotich on 29th December 2016 which established that the deceased died from hypovolemic shock due to massive internal haemorrhage. The matter was reported at the Kipkelion Police Station and following investigations, the accused was arrested and charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.

7. The accused pleaded not guilty to the offence and, following a plea bargaining agreement with the state, pleaded guilty to and was convicted on his own plea of the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The state indicated that it had no previous records with respect to the accused and he could be treated as a first offender.

8. In mitigation, it was submitted on his behalf by his Counsel, Mr. Julius Mutai, that he was aged 15 years at the time of commission of the offence. He had found himself engulfed in a sudden turn of events that led to the commission of the offence that he now faces. He was remorseful and had sought the forgiveness of his parents and reconciled with them. He had reflected on his offence while in custody, had reformed, and was praying for a second chance. He pleaded for leniency and for a non-custodial sentence to enable him continue with his education.

9. A pre-sentencing report was prepared by the Probation Office, Kericho. It is noted in the report that the accused has no criminal record, and that at the time of the events that led to the death of the deceased, he was a standard seven pupil. The Probation Officer's report paints the deceased in a very negative light, as a drunkard and an irresponsible and violent person.

10. I have considered the facts and circumstances of this case, as well as the mitigation offered in respect of the accused. I note that he was aged 15 years at the time of commission of the offence, and that the deceased was his older brother who initiated the quarrel that ended with tragic consequences, more so for him, but also for his younger brother and the entire family which has to live with the consequences of that quarrel. This is a sad Cain and Abel scenario that plays out a lot in our society, arising from events precipitated by jealousy between siblings resulting from the perceived acts or omissions of parents.

11. I have also noted the contents of the Probation Officer's report with respect to the conduct of the deceased. While he may have demonstrated character traits that were regrettable and led to the loss of his life and his younger brother to the present situation, he did not deserve to lose his life.

12. However, given the age of the accused and the circumstances that resulted in the death of his brother, I believe the proper sentence to mete out is a non-custodial sentence. Hopefully, he will be able to pick up the broken threads of his life, go back to school and make something of himself.

13. Accordingly, I sentence the accused to probation for a period of three (3) years, to be supervised by the Probation Office, Kericho. It is a specific condition of this order that he returns to school and completes his primary and secondary education.

14. It is so ordered.

Dated, Delivered and Signed at Kericho this 19th day of July 2017.

MUMBI NGUGI

JUDGE