



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 34 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

Z. N. O.....ACCUSED

RULING

[1] The accused herein Z. N. O. was originally charged with murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. By a plea bargain agreement executed the accused and the state on 23rd June, 2016, the charge was reduced to a lesser charge of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**.

[2] The particulars of the charge are that on 6th June 2015 at Ichuni Sub- location in Masaba South District within Kisii County unlawfully caused the death of **RICHARD AKAMA TORORO**.

[3] The accused pleaded not guilty to the lesser charge of manslaughter and was consequently convicted on his own plea of guilty.

[4] The facts of the case were that on the material day, the accused attacked the deceased by hitting him on the head with a stick after which the deceased was rushed to the hospital where he succumbed to the injuries he had sustained in the beating.

[5] The accused was at the time of the offence reported to have been experiencing mental illness for a long time but was under medication. He was however examined and found fit to stand trial but what stands out is that he hit the deceased during the moments of his insane delusions.

[6] In Mitigation, Mr. Okenye for the accused submitted that he was a family man and that he was suffering from mental illness at the time he committed the offence. Mr. Okenye added that the accused was very remorseful and pleaded for the court's leniency on sentence.

[7] The Probation Officer's report filed on 15th July, 2016 contains a recommendation for probation sentence in view of the fact that the accused's mental status had improved and he could therefore benefit from close supervision and medication.

[8] The Probation Officer was categorical that the accused was no longer a threat to peace in his community.

[9] I have considered the unfortunate circumstances that led to the death of the deceased which has been attributed to the accused's mental illness from which he is reported to have recovered.

[10] The accused's mental state was examined before the trial and he was found fit to stand trial even though an initial mental assessment revealed that he was unfit to stand trial.

[11] From the above foregoing, it is quite apparent that the accused suffered from mental illness at the time he committed the offence from which he has now recovered.

[12] Under **Section 11 of the Penal Code** a person is presumed to be of sound mind unless proved otherwise. The section provides as follows:

“11. Presumption of sanity Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.”

[13] **Section 12 the Penal Code** states as follows regarding criminal responsibility.

“12. Insanity

A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is, through any disease affecting his mind, incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission; but a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act or omission.”

[14] In the case of **Marii Vs Republic [1985] KLR 710**, the court of appeal held, inter alia, that the burden of proving insanity rests on the accused since a man is presumed to be sane and accountable for his actions until the contrary is shown.

[15] In the instant case, on 23rd September 2015, about three months after the accused was arraigned in court, he was found mentally unfit to stand trial and a recommendation was made that he undergoes psychiatric treatment.

[16] Having examined and analysed all the facts of the case, I find that on the day the offence was committed the accused was affected by mental illness from which he has since recovered. The accused was due to mental illness unable to appreciate the full consequences of his actions and having been convicted of the lesser charge of manslaughter, I find that a non-custodial sentence would be the most appropriate punishment so that the accused can continue with his medication under the supervision of members of his family, his doctor and the Probation Officer.

[17] Consequently, I sentence the accused herein Z N O to 2½ years probation.

Delivered, dated and signed in at Kisii on 6th of September, 2016.

W.A. OKWANY

JUDGE

In the presence of:

Miss Mbelete for the State

Mr. Magara for Mr. Okenye for the Accused

Omwoyo court clerk