



IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO.1 OF 2011

REPUBLIC - PROSECUTOR

VERSUS

HILLARY KIPKEMOI NGENO - ACCUSED

SENTENCE

The accused person herein, Hillary Kipkemoi Ngeno, is before this court on the information of the Honourable Attorney General dated 10<sup>th</sup> January 2011 to face a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on 6<sup>th</sup> January 2011 at around 10.00 p.m. at Kaitui Trading Centre in Kericho within the Rift Valley Province, the accused is alleged to have murdered Weldon Kimweno Cheruiyot. On 19<sup>th</sup> March 2014, learned counsels from both sides together with the accused executed a plea agreement which was later approved by this court. Pursuant to the aforesaid agreement, the accused instead pleaded guilty to the lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. Upon convicting the accused this court invited the accused and his counsel to make submissions in mitigation.

It is the submission of Mr. Korir, learned advocate for the accused that the accused is a first offender who is remorseful hence he should be given a non-custodial sentence. The learned advocate further urged this court to take into account the fact that the accused is young, single and has been in custody for more than three (3) years. The Probation Officer, Kericho wrote a comprehensive probation report on the accused. According to the probation report, it would appear the offender's clan has taken steps to reconcile with that of the victim. There are signs that those two clans are likely to reconcile. The process of reconciliation has been slowed down by the high premium of compensation demanded by the victim's family. There is a perception by the victim's family that the offender's family are not willing to pay for compensation.

I have looked at the postmortem report and it is apparent that the accused inflicted a single stab wound which turned out to be fatal. The accused is a first offender. He is remorseful. His family and clan are ready to reconcile. It is also clear from the Probation Report that the accused will undergo the traditional Kipsigis cleansing ceremony which normally takes place after compensation and reconciliation processes have been concluded. In the circumstances of this case the appropriate sentence should be non-custodial. This will give the accused a chance to expedite the process of reconciliation, compensation and cleansing. If given a non-custodial sentence I am convinced the accused's re-integration to society can be achieved quickly. The home environment appears conducive and receptive. For the above reasons I hereby order that the accused be set free from custody to immediately serve 3 years on Probation under the supervision of the Probation Officer, Kericho County.

Dated, signed and delivered in open court at Kericho this 16<sup>th</sup> day of May 2014.

J. K. SERGON

JUDGE

In the presence of:

- Lopokoiyit for Director of Public Prosecution
- N/A for C.K.Korir for Accused (but with Notice).
- Accused: present in person