

REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL CASE NO. 38 OF 2022

STATE.....PROSECUTION

VERSUS

AMOS AKENGA ONDIEKI ALIAS MAKORI.....ACCUSED

SENTENCING

1. The offender herein was initially charged with murder contrary to Section 203 as read with 204 of the penal code. He later entered into a plea bargain agreement with the State and the charges were reduced to manslaughter contrary to Section 202 as read with 205 of the penal code. He pleaded guilty to manslaughter and he was accordingly convicted.

2.This case is now coming up for sentencing. The court called for a pre-sentence report from the probation and it has emerged from the same that the convict was a cousin to the deceased. The convict is a first offender.

3.The report indicates the offender is a youthful man aged 32 years married with 2 children the offender takes full responsibility for the offence and is genuinely remorseful stating that he never planned to commit it. The community and the local administration are receptive of the offender and will not have any problems with him serving a noncustodial sentence is granted noting that the accused and the deceased are relatives and the two families have since made peace with the loss.

4.Defence Counsel submitted that the offender is a first offender and at the time of the commission of the offence was intoxicated and is very remorseful. He is the sole bread winner of his family and has since reformed hence the plea

bargain and opts for a non custodial sentence. Prosecution also supported the contention that it was submitted that the offender entered into a plea bargain agreement and save judicial time and so he prayed for leniency.

5.The Supreme Court in the Muruatetu case set down the following factors to be considered in sentencing in murder trials;

a) Age of the offender.

b) Being a first offender.

c)Whether the offender pleaded guilty.

d) Character and record of the offender.

e) Commission of the offence in response to gender-based violence.

f) Remorsefulness of the offender.

g) The possibility of reform and social re-adaptation of the offender.

h) Any other factor that the court considers relevant.

6.I have considered the age of the offender nature of the offence, its circumstances, the pre-sentence report, mitigation, the fact that he is remorseful and the sentiments of community. I agree with defence counsel that the offender deserves leniency for entering into a plea bargain agreement and saved the precious judicial time of the court and expedited the determination of the case. It is clear that the offender cut short the life of his cousin in the process of deceased by hitting him on the head when he tried to intervene to save the wife of accused from his wrath. The post mortem report indicates that the cause of death was due to complications of septic tendonitis due to intestinal perforation due to blunt force trauma due to assault. The pre-sentence report recommends that he is fit for a non-custodial sentence and that the community is receptive of him since the families have since reconciled. The presentence report however

indicates that the family of deceased could not be reached directly but through the local administration for reasons which are not clear.

7.The offender has saved the judicial time and resources; he is entitled to some concession on the sentence. I have also taken into account the remand period non-custodial sentence would therefore be appropriate herein.

8. I proceed to sentence the offender to 3 years probation.

9.14 days Right of appeal.

T.A ODERA
JUDGE
5.11.25

Delivered Virtually Via Teams Platform in the Presence of:

Accused

Miss Nyandoro for Accused

Mr. Koima for the State

Court Assistant - Mr. Kipchirchir