Republic v Njer (Criminal Case 27 of 2015) [2024] KEHC 6224 (KLR) (26 April 2024) (Sentence)

Neutral citation: [2024] KEHC 6224 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

CRIMINAL CASE 27 OF 2015

MN MWANGI, J

APRIL 26, 2024

BETWEEN

REPUBLIC ..... PROSECUTOR

AND

MAXWEL ODHIAMBO NJER ..... ACCUSED

SENTENCE

1. I have considered the pre-sentencing report dated 23rd April, 2024 and the victim impact assessment report dated 17th April, 2024 presented before this Court by the Principal Probation Officer, Mr. Wycliffe M. Wathome.

2. I have also considered the mitigation made on behalf of the accused person by his Advocate, Mr. Wairagu.

3. The deceased died at the age of 41 years. The rash action of the accused person of arming himself with an iron rod and attacking him due to a road traffic accident that the accused had caused was uncalled for. Instead of following the directions he had been given by the deceased to drive the motor vehicle he had to Changamwe Police Station, the accused person attacked the deceased who was in the course of carrying out his traffic duties.

4. The injuries occasioned on him led to his death 4 months later. The actions of the accused person are indicative of a man who is quick to anger and a man who does things in a rash manner as was captured on the pre-sentencing report.

5. The Probation Officer therefore correctly pointed out that the accused person requires anger management.

6. The victim impact assessment report shows that the family of the deceased continue to suffer emotionally and financially due to the death of the deceased.

7. Although it has been said that the accused person's family are also suffering financially, the accused person is still alive, whereas the deceased's family lost their bread winner at the hands of the accused person.

8. I have considered that the accused person is remorseful and that he is suffering from ill health. However, part of that ill health has been caused by the accused person himself who at one time informed this Court that he had been abusing cannabis sativa (bhang) when he was in prison. He later informed this Court that he had stopped using bhang.This Court has heard this case since 19.9.2018 and indeed noted that the accused person's health has been deteriorating over the years.

9. I have considered that the accused person was first arraigned in Court on 11.8.2015 and has been in prison remand for 8 years and 8 months as his case was being heard.

10. It is also noted that he is a first offender. Having borne all the foregoing factors into consideration as well as the Judiciary Sentencing Policy, it is my considered view that the offence committed by the accused person calls for a custodial sentence and severe one at that. That will give the accused person time to look back, introspect at the grave error he made of taking the deceased's life. It will also act as punishment for the offence he committed. It is also hoped that the custodial sentence will be reformative so that the accused person can get out of prison as a better person than when he was remanded in there.

11. I therefore sentence the accused person to Thirty (30) years imprisonment.

    In line with the provisions of Section 333 (2) of the *Criminal Procedure Code*, his sentence shall be computed from 11.8.2015 being the first day he was arraigned in Court for the murder charge.

    It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 26TH DAY OF APRIL, 2024.

JUDGEMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

NJOKI MWANGI

JUDGE

In the presence of:-

Appellant present

Ms Nyawinda, Principal Prosecution Counsel for the DPP

Mr Wairagu for the accused person

Ms B. Wokabi - Court Assistant.