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Case Action:	Sentence
Judge:	Joel Mwaura Ngugi
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Advocates:	-
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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO. 62 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

EPHANTUS KARANJA WANGARI.....ACCUSED

SENTENCE

1. The accused, Ephantus Karanja Wangari (“Accused”), was originally charged with murder contrary to section 203 as read together with section 204 of the Penal Code. The particulars in the charge sheet were that the Accused had, on 2nd February, 2015, at Gitambaa village in Ruiru within Kiambu county murdered Peter Karanja.

2. The Accused was first arraigned in Court on 09/04/2015 at the Murang'a High Court. On 15/06/2015, following the establishment of the High Court of Kenya in Kiambu, the matter was transferred to this Court for hearing and disposal. It first came before this Court on 20/07/2016 when the Prosecutor, Ms. Maari requested for a further mention since she did not have her file. When the matter came up again on 29/07/2016, Ms. Maari indicated that she had written to the Director of Public Prosecutions to seek for approval to pursue a Plea Agreement with the Defence in the matter. The plea bargain was successful and, on 08/11/2016, the Accused pleaded guilty subject to the plea agreement. The plea agreement reduced the offence charged from murder to manslaughter. The Court approved the Plea Agreement, and, after duly complying with sections 137D and 137H of the Criminal Procedure Code, convicted the Accused on his own plea of guilty on the charge of manslaughter.

3. The agreed facts of the case are as follows: On 02/02/2015 at around noon, the Accused was working at a construction site. He was involved in a confrontation with the deceased – who was inebriated at the time. That confrontation led to a scuffle during which the Accused hit the deceased twice on the forehead with his head and once on his lips. The deceased fell down with blood oozing from the mouth. He was taken to Ruiru Sub-district Hospital where he was referred to Gatundu District Hospital where he was, in turn, admitted. It was here that it was discovered that he had severe head and spinal injuries. The deceased passed on about ten days later succumbing to those injuries.

4. The Court invited the family of the victim to make a statement if they were so minded. They filed a Victim Impact Statement recorded by Mr. Samuel Mwaura Karanja who also requested to read the statement in open Court. The Statement expressed the anguish of losing a family member. The Deceased was a brother, a husband and a wife: he left behind a wife and three children. He was the sole breadwinner of the family. His death has impacted his immediate family quite negatively. The victim's family was also unhappy with the way the Accused's family has conducted itself in the aftermath of the death. They think that the family of the Accused had not shown any remorse at all and that they have acted “as if nothing happened.” However, when I specifically asked Mr. Samuel Karanja whether he thought the Accused Person deserved a custodial sentence, his response was that only the Court can decide that. He was unwilling to express that as the view of the family.

5. The Accused Person was led in his mitigation by his advocate, Mr. Omari. He expressed remorse for

what happened. He explained that he is planning to go to the victim's family to seek forgiveness but he knows that culturally, he cannot do it "empty-handed"; he is expected to take a token as a symbol of his grief. He is committed to do that even without the support of his extended family. It was very important for him, he said, that the Deceased's family understood that he was sorry for what happened. He wanted them to understand that what happened was not planned or malicious but that he understood their bitterness for losing their son, brother, husband and father. Addressing the victim's family directly, the Accused said thus:

"I would like to address the Deceased's family. The Deceased was a close friend of mine. I would like to say how sorry I am for this. I really did not plan for this to happen. I would really like for them to forgive me. I know it is hard from them to forgive me but I would really like them to try and do it. This is important for me; that they understand that I am sorry."

6. The Accused Person told the Court that the incident that led to the death of the Deceased has changed him completely. While he was never a violent person, he narrated he had now changed his life completely. He would never involve himself in a confrontation again even if provoked.

7. Finally, the Accused Person pleaded with the Court to consider his plight: he is husband and a father of two children aged 6 years and 4 years old. He is the sole bread winner of the family.

8. Mr. Omari, in his address to the Court referred the Court to four recent decisions where, in similar circumstances, the Court handed down non-custodial sentence:

a. In ***R v Jared Moga Ayako***[2016] eKLR, the Accused had been charged with murder but pleaded to manslaughter pursuant to a plea agreement. The facts were that the Accused was a brother to the deceased and they engaged in a violent confrontation when the deceased hit him in the chest and the Accused retaliated by hitting him in the chest with the jembe he had in his hands at the time. The Accused was 36 years old and had a wife and 2 children. The Court placed the Accused under probation for two years.

b. In ***R v Elijah Kipkemoi Langat*** [2014] eKLR, the Accused Person was charged with murder but pleaded guilty to manslaughter pursuant to a plea agreement. The facts were that the deceased, who was the wife of the Accused, left their matrimonial home without a word on where she was going and came back at 12:30am the following morning quite inebriated. Finding the Accused and the rest of the family asleep having had to do without dinner due to the deceased's absence, the deceased claimed that she was coming from the posho mill. The Accused perceived this to be a blatant lie. Infuriated, he grabbed a metal bar usually used to light fire at the home and used it to hit the deceased. The following morning, he discovered that the deceased had died. The Court sentenced the Accused to two years probation.

c. In ***R V Kennedy Matiba Oketch*** [2015] eKLR, the Accused pleaded guilty to manslaughter over the death of his father. The deceased had gone to the home of the Accused where an argument arose over the payment of school fees for the Accused's younger brother. In the midst of the argument, in anger, the deceased hit the Accused on the head with his hand. Enraged, the Accused grabbed a *panga* and slashed the deceased on his head inflicting severe injury that led to the deceased's death. Noting that the Accused had spent three years in custody awaiting his trial, the Court sentenced the Accused to three years under probationary supervision.

d. Finally, in ***R v Caren Kerubo Omosa*** [2016] eKLR, the Accused was similarly convicted of manslaughter on her own plea pursuant to a plea agreement. Here, the Accused was the wife of the

deceased and they disagreed over a piece of matrimonial property that the deceased wanted to sell. The disagreement escalated to a physical fight in the midst of which the Accused grabbed a club and hit the deceased on the head resulting in his eventual death. The Court noted that the Accused had been in custody for one year and sentenced her to 1 year probation.

Mr. Omari urged the Court to consider that:

- a. The Accused was not armed;
- b. The confrontation was brief and the Accused did not intend to injure the deceased;
- c. The Accused is quite remorseful and concedes that his conduct was wrong, despite the confrontation by the deceased;
- d. The Probation Report is clear that the Accused's antecedents are very good and that he was law-abiding and responsible member of the community;
- e. There is no bad blood between the families of the Victim and that of the Accused and that the Accused has pledged to go seek the forgiveness of the victim's family using culturally appropriate methods.

10. In conclusion, Mr. Omari urged that this is an appropriate case for non-custodial sentence to ensure that restorative justice takes root.

11. I have considered all the factors carefully. I have noted that the death of the deceased followed a very brief confrontation in which the Accused Person head-butted the deceased. He did not use any weapon to do so and it is easy to conclude from the circumstances he did not intend to cause injury. One cannot say, in context, that this was a particularly egregious display of violence. Indeed, the Accused Person did not know the nature of the injury suffered by the deceased until much later.

12. I have also come to the conclusion that the Accused Person is truly remorseful. Indeed, his remorse was palpable in his address to the Court and in his direct address to the family of the deceased. I had occasion to watch him and interact with him as he addressed the Court and Victim's family, I am persuaded that his remorse is authentic and genuine.

13. There is no doubt that the death of the deceased – a young man with a young family – was a regrettable and tragic incident. The bitterness which the Victim's family feels is justified and understandable. However, I do think that the Accused Person has demonstrated that he is remorseful. As the agreed facts established, the death of the deceased was not a product of malicious or pre-meditated planning. Neither was it the culmination of many months or days of animosity. It was a spontaneous explosion of violence following a confrontation. It was the product of a momentary lapse of judgment.

14. I have considered the Probation Report filed in this case. The Probation Officer seems to have concentrated her efforts on establishing whether a reconciliation between the two families had been achieved and concluded that it had not happened by the time she was filing her report. This is an important step for restorative justice. However, it is not dispositive to determine the question whether the case is suitable for non-custodial sentence. For that consideration, in addition to the social inquiry brought out in the Probation Report, the focus on the Accused Person – his character, antecedents and extenuating circumstances in which the offence was committed – is important. Here, the Probation

Report establishes that the Accused Person has been a responsible and law-abiding member of the community and a responsible husband and father. He is a husband and a father of two young children. The Report concludes that the Accused is not deemed to be at risk if given a non-custodial sentence since the community has a positive regard for him. The Prosecutor also confirmed that the Accused Person is a first offender. The Probation Report also confirms that the Accused Person is remorseful and regrets his action that led to the death of the deceased. He is willing to pursue reconciliation using the Kikuyu customary reconciliation process.

15. Finally, I considered the four authorities cited to me by Mr. Omari. What unites those cases is the circumstances under which the death occurred – where the Accused Persons reacted violently in the context of a confrontation resulting in an action that inflicts injury to the deceased leading to their death. In all these cases, the Accused Persons were remorseful and deeply regretted their actions. In each case, the Trial Court noted that the actions of the Accused Persons were not planned in advance and there was no time for them to cool down and consider the actions they were about to take. Such is the situation here.

16. Consequently, after considering all these factors, I have come to the conclusion that it will serve no useful purpose for the Accused Person to be sent to prison on a custodial sentence. I have noted that the Accused Person was in custody for five months. The context and circumstances here point to a non-custodial sentence. I am satisfied that the Accused is willing to comply with the conditions of any probation order imposed. The Accused Person is hereby sentenced to be under probation for a period of three (3) years.

Dated and delivered at Kiambu this 21st day of November, 2016.

JOEL NGUGI

JUDGE



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