



REPUBLIC OF KENYA



KENYA LAW
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Republic v Mango (Criminal Case 9 of 2023)
[2023] KEHC 26716 (KLR) (20 December 2023) (Sentence)

Neutral citation: [2023] KEHC 26716 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 9 OF 2023

JN KAMAU, J

DECEMBER 20, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

JACKSON MANGO ACCUSED

SENTENCE

1. The Accused person was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* Cap 63 (Laws of Kenya). He entered into a Plea Agreement on 20th November 2023 whereupon this court convicted him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.
2. The facts of the case are that on 5th April 2018 at around 2000hours, (PW 1) (June Chebet) was in her rental house within Ivona area at Chavakali town when she heard her neighbours, Jackson Munga (the Accused) come in the company of his wife, Esther Mmbone (Deceased). They opened their door and entered their house. Shortly thereafter, PW 1 heard commotions/quarrel from their house. She peeped through the window and she saw the Accused person fighting with the deceased.
3. On the morning of 5th April 2018, PW 1 woke up and continued with her housework. She realised that the Accused person's house had been locked from inside. She knocked to confirm if the Accused person and the deceased were in bed and the Accused person told her that they were resting since they had arrived home late the previous night. They never woke up the whole day which made PW 1 inform Edith Efedha (PW 2) and they both went and knocked on the Accused person's home. They heard him wake up and he switched on the lights. They saw the deceased lying on the mattress as he person stood by the window. He told them that the deceased was dead.
4. They asked him to open the door but he refused. He then took a kitchen knife that was next to him and stabbed himself in the stomach. Members of the public gathered and police who were informed



- of the incident broke the door and found him lying in a pool of blood while the deceased was lying on a mattress.
5. A Postmortem was carried out on 10th April 2018. It showed that the cause of the deceased's death was strangulation secondary to trauma. The Postmortem Reported dated 10th April 2018 was produced and marked as PEXH 1.
 6. Having entered into a Plea Agreement, the Accused person urged this court to sentence him to fifteen (15) years imprisonment. On its part, the State recommended a sentence of twenty five (25) years imprisonment.
 7. In his mitigation, he asked this court to rely on the Pre-Sentence Report of J. Sahani Probation Officer Vihiga Station that was dated 13th December 2023 and filed on 19th December 2023 which was favourable to him. He pointed out that he was a first offender with no previous criminal records.
 8. He asserted that he truly loved the deceased and that on the material date, he wanted to restrain the deceased from attacking him with a knife. He was remorseful and regretted her death.
 9. He told the court that he had a wife and three (3) children. He contended that the said Pre-Sentence Report painted him as a calm person who minded his own business and this urged this court to mete upon him a non-custodial sentence.
 10. Notably, sentencing is one of the most intricate aspects of trial. Indeed, a trial does not end unless a sentence has been meted out. The principle of sentencing is fairness, justice, proportionality and commitment to public safety. The main objectives of sentencing are retribution, incapacitation, deterrence, rehabilitation and reparation. The Sentencing Policy Guidelines in Kenya have added community protection and denunciation as sentencing objectives. The objectives are not mutually exclusive and can overlap.
 11. It was also important that the sentence communicate to the community, condemnation of his criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence.
 12. The sentence also had to one that was hinged on retributive justice for the secondary victims. Justice not only needed to be done but it had to be seen to be done.
 13. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of his offence at the time of sentencing him, chances of the Accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
 14. According to the aforesaid Pre-Sentence Report, the Accused person the deceased and the Accused person who cohabited together started arguing after the deceased accused him of having spent the money on other women. The deceased picked a knife and wanted to stab him. He grabbed her neck with an intention of containing her but he went overboard and she lost consciousness.
 15. His family viewed him as a well mannered boy. On the other hand, the deceased's family was shocked by her death and her father was yet to recover. He did not see negotiation or reconciliation with the Accused person as an option. The community viewed him as a person who minded his own business.
 16. He was a first offender and regretted having caused the deceased's death and now knew that he could have handled the situation differently. He cried a lot during the interview with the Probation Officer. He was, however, said to be short tempered and used drugs and alcohol which could have triggered this offence. The Probation Officer recommended a non-custodial sentence.



17. This court looked at the Post-mortem Report and noted that the cause of the deceased's death was strangulation. There was an altercation between the deceased and the Accused person. He was defending himself from a knife attack. The killing did not therefore appear pre-mediated. The Accused was remorseful and was a first offender with no previous records. The Pre-Sentence Report was favourable to him.
18. Having considered the facts of this case and the Accused person's mitigation, this court to the firm conclusion that a Probation sentence of three (3) years would be suitable and adequate herein which would give him time to learn how to manage his anger issues. This case had been going on since 2018 during which time the case must have weighed him down. He also remained in custody for about three (3) months before he was released on bail/bond.
19. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to three (3) years' Probation to run from today.
20. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 20TH DAY OF DECEMBER 2023.

J. KAMAU

JUDGE

