



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MURANGA**

**CRIMINAL CASE NO 23 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DWK.....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 to which she pleaded not guilty.
2. By a plea Agreement, entered into between the Director of Public Prosecution and accepted by the court, the said charge was reduced to manslaughter contrary to section 202 as read with section 205 of the penal code the particulars of which were that on 1<sup>st</sup> June 2018 at [particulars withheld] location Mununga sub location within Muranga unlawfully caused the death of JN1.
3. The facts thereon were that on 1<sup>st</sup> day of June 2018 at around 2100 hours the accused and the deceased had a quarrel and she picked up a kitchen knife and stabbed the deceased on the left side below the collar bone. An uncle of the deceased had the scuffled and rushed to the scene, where he found the deceased and the accused holding each other, with the deceased having blood stains on his vest. He was taken to Muranga Level 5 Hospital where he was pronounced dead on arrival.
4. A post mortem conducted on the body of the deceased established that the cause of death was due to a penetrating sharp trauma to the heart.
5. The accused was later on arrested and the knife recovered hidden between two mattresses in their home.
6. The accused pleaded guilty to the said facts and was convicted on her own plea of guilty.

**MITIGATION**

7. In mitigation, the convict through her Advocate on record stated that she had been a victim of domestic violence from the deceased and was living in an abusive marriage from the same who was always drunk. At the time of the commission of the offence she was 22 years old and a mother of one child aged two years and two months and that the said child needed her motherly love and care. It was contended that she was a first offender and remorseful. The court was urged to take into account the fact that she had been in custody since June 2018. She therefore pleaded that the said three years' period. was adequate and should be released to continue with her life.
8. On behalf of the prosecution, it was stated that the accused was a first time offender and should be treated as such.

**PRE SENTENCING REPORT**

9. In compliance with the Judiciary Guideline on sentencing, the court called for pre-sentencing report and called up the parties to make submissions. It was stated that the accused had been living in abusive marriage and was a victim of domestic violence from the onset of their marriage and that on the material day the deceased came home drunk and started to abuse her calling her a prostitute and on the ensuing scuffle the deceased picked up a kitchen knife which he wanted to stab her with and she snatched the same from him and in the process she stabbed the deceased.
10. Her family, it was stated were willing to receive her back and that the relationship between the two families had deteriorated. They pleaded for none custodial sentence to enable the convict take care of her child.

11. The victim's family stated that they were not informed of the plea bargain and that the accused had stabbed the deceased six times and hidden the weapon and that the accused brother prior to the murder had bragged in the village how their mother had given the accused a kitchen knife to kill her husband with.

It was their contention that the responsibility of taking care of the accused and deceased child should be given to them and that the accused family had not reached out to them.

12. On the community view, it was stated that the community had forgotten the issue and moved on and had thought that the case had been over with the accused jailed.

13. On conclusion it was stated that the accused family were willing to accept her back and that the accused sought for none custodial sentence to enable her bring up her child who now had no father, the area chief was not opposed to her release.

14. At the sentencing hearing, the court heard from the mother of the deceased one SWN who stated that she was not aware of the plea agreement and did not know the stage where the case had reached, she became emotional and was unable to testify further. A sister of the deceased on EN stated that she would like the convict to be sentenced for life while his Nephew one JN stated that the convict did well in admitting the offence but stated that her family had not done what was expected of them. He therefore sought for justice on behalf of the deceased and prayed for a jail term.

15. The father of the accused one EK stated that since the accused had admitted the offence and since she had left her child under his care, she should be granted none custodial sentence so as to take care of her child.

16. Miss Otieno for the DPP stated that life was precious and since the accused took away the life of the deceased she should be given the maximum sentence provided for in law so as to act as a deterrence to her and other would be offenders. Mr Mwaniki on behalf of the accused stated that whereas life was precious, the court ought to consider the circumstances under which the offence was committed and temper justice with mercy.

## **DETERMINATION**

17. The sentencing objective are as follows: 1 Sentences are imposed to meet the following objectives: 1. Retribution: To punish the offender for his/her criminal conduct in a just manner. 2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences. 3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person. 4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs. 5. Community protection: To protect the community by incapacitating the offender. 6. Denunciation: To communicate the community's condemnation of the criminal conduct. 4.2 These objectives are not mutually exclusive, although there are instances in which they may be in conflict with each other. As much as possible, sentences imposed should be geared towards meeting the above objectives in totality.

In imposing any sentence, the court must always have the above objectives in mind and must at all times try to make sure that the sentence imposed meet the justice of each case.

The Supreme Court of Kenya in the case of Francis K Muruatetu and another had this to say on what the court ought to consider while passing the sentence "[71] **As a consequence of this decision, paragraph 6.4-6.7 of the guidelines are no longer applicable. To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:**

*(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.*

18. I have taken into account the fact that the accused and the deceased were married and living together in a union where the accused expected to find love and comfort and it is in the confine of the said home that the same was subjected to domestic abuse, which has not been denied. I have further looked at the post-mortem report wherein it is indicated that the deceased sustained the following injuries;

a) Right supraclavicular stab wound with clean edge 2cm wide

- b) Left mid chest stab wound with clean edge 4cm in width
- c) Left posterior mid forearm stab wound with clean edges 3cm in width (which the Doctor classified as defence wound)
- d) Left mid back 2 wounds 1) incised wound 5 cm long 2) stab wound 2cm in width
- e) Incised wound at fifth intercostal space left side 3cm in width
- f) Incised wound at the dorsal anterior right ventricle 3cm in width

19. Whereas the accused was alleged to have been in an abusive relationship which the court has to take into account, I have looked at the injuries sustained by the deceased and formed the view that they were excessive taking into account the fact that the deceased is alleged to have only called her a prostitute, putting her at the same rank with Mary Madeline, who became an undisclosed disciple of Jesus Christ and who had the privilege of being the first one to have seen the risen saviour, so the Christian holy book says and since it was the deceased who had married the alleged prostitute willingly, that should not have called for his death.

20. Justice Odunga has put it in more graphic language, that the best the accused should have done was to walk away, while Justice Lesitt in the case of the famous *Ms Langata Prison Republic v Ruth Wanjiru Kamande* [ 2018] e KLR stated as follows: ***I want young people to know that it is not cool to kill your boy or girlfriend. Even where you feel disappointed or frustrated don't do it. Instead it is cool to walk away and thereafter forgive.***

21. Whereas the accused was a victim, the deceased did not have to die as he did and whereas the accused has pleaded guilty to manslaughter the sentence provided for is up to life imprisonment. I have taken into account the fact that whereas the life of the deceased may not be restored, the accused now remains the mother of a child whom the family of the deceased want to be given to, and having taken into account the best interest of the said child who may be like Barak Obama will one day lift up the name of the deceased, I have taken that in sentencing the accused and have come to the conclusion that a sentence combining both deterrence and rehabilitation will be the most appropriate in the circumstances of this case.

22. I would therefore sentence the accused to a term of ten (10) years to be served as follows

- A) Seven years' imprisonment from the 18<sup>th</sup> day of June 2018 when the same first appeared in court in compliance with the provision of section 333(2) of the Criminal Procedure Code
- B) Three years thereafter on probation for rehabilitation and resettlement of the same into society
- C) The convict is entitled to remission on the sentence if any.

23. Having entered into plea bargain agreement the accused and the state are entitled to appeal on the sentence only.

24. And it is ordered.

**DATED SIGNED AND DELIVERED AT MURANGA this 23<sup>rd</sup> Day of February, 2022**

**J. WAKIAGA**

**JUDGE**