



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO.E068 OF 2021

PENINAH WANJIRU MUCHEMI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON SENTENCING

1. The accused person, **PENINAH WANJIRU MUCHEMI** was first charged with the offence of **Murder contrary to Section 203 as read with Section 204 of the Penal code.**

The particulars were that:-

“On the night of 11th September, 2021 at 23.30 hours at Waithaka area in Dagoretti Sub-county within Nairobi County, the accused murdered GEORGE ONG’AMO MANG’ENI”

2. She was arraigned in court on **28th September, 2021** but pleas was deferred to **12th October, 2021** for the Deputy Registrar of this court to appoint counsel for the accused.

3. The accused person was assigned **Mr. Kariu** as counsel and on **13th October, 2021** she pleaded **“NOT GUILTY”** to the offence of murder. The matter was fixed for hearing on **29th and 30th October, 2021.**

4. On **29th October 2021**, the matter came up for hearing but the accused person’s counsel indicated to court that after going through the committal bundles, he had found it fit to request the Office of the Director of Public Prosecution (ODPP) to be amenable to a plea bargain agreement hence requested that the hearing be deferred. And even though they were ready to proceed for hearing with four (4) witnesses, **M/S Gikonyo**, counsel for the prosecution conceded to the request by the defence.

5. On **21st December, 2021**, the parties confirmed that they had entered into a plea bargain agreement and the prosecution filed a fresh charge sheet wherein the charge against the accused person had been reduced to **Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.**

The particulars of the offence are:-

“On the 11th day of September, 2021 at 2330 hours at Waithaka area in Dagoretti Sub-county within Nairobi County unlawfully killed GEORGE ONG’AMO MANG’ENI

6. The information thereof was read to the accused person on **22nd December, 2021** and she pleaded guilty to the offence of Manslaughter. She was then convicted for the said offence on her own plea of guilt after she confirmed the facts of the case.

7. Before the prosecution and defence could address court on the accused person’s past records and mitigation, the case was referred to the Probation Officer for a social inquiry on the accused person so that a pre-sentence report could be filed. The pre-sentence report preferred and signed by **AYUNA A. OTUKITO**, a Probation Officer, was filed on **31st January, 2022.**

8. On **21st February, 2022**, the prosecution indicated that the accused person could be treated as a 1st offender since they had no previous records on her.

9. **Mr. Kariu**, counsel for the accused person in mitigating for the accused person, submitted that the accused person was very remorseful for having caused the death of her husband and apologized to his family and society at large. He stated that she was twenty four (24) years old and had two children, aged four(4) years and two (2) years old respectively, who desire her care since they have lost their father. He also submitted the circumstances leading to the death of the deceased were as a result of provocation by the deceased and the accused person's action was in self defence. Further, counsel for the accused person submitted that the accused person and the deceased have been found to have been abusing drugs (bhang) and alcohol, the accused person having been exposed to the vice by her mother. He concluded by submitted that the accused person had co-operated with the prosecution at all times and pleaded that the court exercises leniency in sentencing her, by considering granting her a non-custodial sentence.

10. **M/S Gikonyo**, counsel for the State invited court to look into the pre-sentence report in respect of the accused person which had been filed by the Probation Officer. She highlighted several issues which the Probation Officer, which I confirmed on perusing the said report. According to the report, the accused person is depicted to have lived a difficult life, her parents having separated when she was so young. It is also reported that the accused's mother lives a reckless life of abusing alcohol and drugs, which she has initiated the accused into that she lives on the edge, by equally abusing drugs and alcohol. It is reported that the accused and deceased had a tumultuous relationship as the accused was very violent when drunk and high on drugs. The report reveals that the most contentious issues between the deceased and accused was her misappropriation of family funds meant for food and upkeep and neglecting the children. And that in anticipation of the rebuke from the accused always threatened to teach him a lesson and was always armed with two sharp knives. It is further reported that she had scalded her youngest child with hot water while trying to prepare a meal while drunk, and the said child is yet to fully recover from the injury.

11. Also, from the report, the members of the community are reported to be of the view that the accused person should pay for her crime so that she can learn that killing a fellow human being can never be a solution to a problem.

12. The report goes on to state that the family of the deceased is very bitter over the fate that befell their kin at the hands of the deceased and appeal to the court to give them justice. It is further reported that the victim's father is so bitter especially having lost the deceased's twin under unclear circumstances and his wife, their wife from a heart attack in **2019** and **2020** respectively. That he laments that he was never involved in the plea bargain agreement that was entered into for the offender and hence crying foul.

13. In the Probation Officer's assessment, the accused is a high risk of recidivism and has recommended that she is not fit for a non-custodial sentence.

14. The general framework on sentencing has been laid down in our Constitution, statutes, case in law and the **Judicial Sentencing Policy Guidelines**. It is trite that sentencing is at the discretion of a trial Judge as he or she is the one seized with the opportunity to conduct the trial and observe the demeanour of the accused and or witnesses if at all. However, the discretion must be exercised judiciously (**See the case of African Continents Bank –vs- Nuamini [1991] NNLI 486**).

15. In sentencing, the following factors ought to be considered:-

a) The convict has been convicted of the offence.

b) The deceased had a right to life that was taken away from him.

c) From all facts of the case and the way the deceased was killed, the accused has been said to have always threatened him with knives.

d) There are no established previous records of the convict.

e) The convict is noted to have a reckless life medaled with abuse of drugs and alcohol and violent behavior.

f) The convict is known to be negligent and does not have the interest of her children at heart despite her mitigation statement she has been classified by the Probation Officer as a high risk of recidivism.

16. Having considered all the factors presented herein in respect of the accused person, I find that she deserved a sentence that is deterrent. She has been in custody from **September, 2021** which is not such a long period.

17. I therefore sentence the accused person to serve five (5) years imprisonment from the date of conviction.

It is so ordered.

RULING DELIVERED IN OPEN COURT, DATED AND SIGNED AT NAIROBI THIS 22ND DAY OF FEBRUARY, 2022.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Gikonyo counsel for accused person

Mr. Kariu counsel for the accused

Accused - present