



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAPENGURIA

CRIMINAL CASE NO 1 OF 2021

REPUBLIC.....PROSECUTOR

VERSUS

IRENE CHEROP.....ACCUSED

JUDGEMENT ON SENTENCE

The issue before me is one of the appropriate sentence to be imposed upon the accused following her conviction on a plea of guilty on a charge of manslaughter.

Ms Opondo, counsel for the accused mitigated on behalf of the accused. She told the court that the accused is very remorseful and has four minor children, who are aged between three months to five years, with the latter being the oldest. Ms Opondo also told the court that by pleading guilty her client saved the time of the court.

She further told the court that her client used to drink alcohol; which has been the cause of her problems and has now promised to stop drinking.

Furthermore, Ms. Opondo told the court that the accused is aged 24 years old.

She urged the court to impose a non-custodial sentence.

Upon the application of Ms. Opondo, the court called for a probation officer's report, which was duly presented to the court. The report found the following information in respect of the accused. The accused eloped and got married at Kolowo area of Baringo county.

Furthermore, the accused told the probation officer that she acted in self defence after the deceased hit her on the head with a wooden stick. She then used the same wooden stick to hit the deceased on the head.

The father and maternal aunt of the accused prayed that the accused be sentenced to a non-custodial sentence to enable her to take care of her children. They are willing to support the accused if she is sentenced to a non-custodial sentence.

The area chief and assistant chief do not know the accused well; since she had stayed in their area of jurisdiction for only four months. They were of the view that the accused has no attachment to the area.

The community stated that the accused used to sell chang'aaa. She also used to quarrel with the deceased all the time. The accused was accused of infidelity by her neighbours. They accused her of cohabiting with another man, while the deceased was away for one year.

The probation officer was unable to get in touch with the victims' family at Kolowo village which is in Tiaty sub-county of Baringo county; because there is an ongoing disarmament operation by the police. However, the probation officer managed to talk to the maternal uncle of the deceased, who resides at Chepareria area. He stated that as a family they are very bitter for the loss of their son. He also expressed disappointment with the family of the accused for keeping aloof and for not condoling with them, even after attempts to reach them through the local administration.

The deceased returned home and met his death within two weeks and found the offender with a one-week child whose paternity was the cause of the dispute between them.

In view of the foregoing, the probation officer has recommended that the accused be placed on probation for three years.

The prosecution is opposed to the accused being placed on probation.

I find that this is a case of domestic violence. The relation between the accused and her deceased husband were strained. I further find that the accused used to drink and sell alcohol, which increased the strained relations between them. The strained relations between them was made worse by the accusation of infidelity on the part of the wife.

Furthermore, I have taken into account that a life has been lost; which cannot be replaced. The children of the deceased have been left without a father.

I have taken into account that the accused has now been in remand custody for about three months; which I am mandatorily required to take into account by section 333 (2) of the Criminal Procedure Code (Cap 75) Laws of Kenya. Additionally, I have also taken into account that the accused pleaded guilty to the charge; thus saving judicial time and other resources. I have further taken into account that the deceased was the aggressor in this dispute that turned out to be tragic.

I have considered the probation report that recommends the accused to be put on probation for three years. I find that the accused is not suitable for probation; because she has very little attachment to the community. Furthermore, she is not suitable for probation since she has no attachment to the area. This is more so given the fact that the accused lived in rented premises; which now have rented out. This will make it difficult for the probation officer to supervise the accused, if she were to be released on probation.

After taking into account all the foregoing matters, I find that the accused deserves a custodial sentence.

In the premises, I hereby sentence the accused to a term of two and half years' imprisonment to run from the date of this judgement.

Judgement dated, signed and delivered in open court at Kapenguria this 17th day of March 2021.

J M BWONWONG'A

JUDGE

In the presence of

Ms Hellen court assistant

Mr Makori for the Republic

Ms Opondo for the accused.