



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO. 2 OF 2013

REPUBLIC

VERSUS

EUNICE WANGUI MAINA.....ACCUSED

RULING ON SENTENCE

1. The accused was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; upon a Plea Bargain Agreement dated 17/03/2021 being entered this charge was then reduced to manslaughter;
2. The Plea Bargain Agreement was adopted by the court upon it being satisfied that the accused had understood the contents and that she had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion of any kind;
3. The accused was charged with having unlawfully killed Peter Gitahi Kamau on the 27th day of December, 2012 at Mutaga Village Mathira West Sub-County within Nyeri County; she was convicted on her own plea of 'Guilty' of the offence of Manslaughter c/s to Section 202 as read with Section 205 of the Penal Code;
4. At the hearing hereof the accused was at all material times represented by Learned Counsel Mr Njuguna whereas Mr. Ondimu was the Prosecuting Counsel for the State; both counsel were invited to make submissions before sentencing;
5. Prosecuting Counsel for the State submitted that by accepting the Plea Bargain the accused had not wasted judicial time; the Probation Officer's Report filed on the 18/04/2013 availed in the court record touched on the accused and the deceased's status in that the couple were both challenged in speech and hearing; their interaction with each other is that both used to drink a lot which led to fights between them; the mitigating factors were the prosecution had no previous records of the convict and that she may be treated as a first offender; she had children that she took care of and that the community and it demonstrated that he had a continuing good relationship with the community;
6. The record showed that the convict had been granted bail and was unable to raise the bail and therefore stayed in remand for approximately one (1) year; whilst out on bail there was no indication on the court record that she ever breached or violated the terms; based on the circumstances of the case and due to the fact that she has children that she takes care of.
7. In mitigation Counsel for the accused submitted that the convict mourned the loss of her husband and was extremely remorseful; that it had been an extremely difficult marriage and fearing for her safety and life she had run away from home, severally; she had been in remand for close to one year before she was able to raise the bail; whilst in prison she had learnt that crime does not pay at all;
8. Counsel pleaded for leniency on the grounds that she was the only surviving parent and had two (2) issues of the marriage to take care of; and that she was a first offender and prayed for a pardon or a non-custodial sentence of two (2) years on probation.

ANALYSIS

9. It is the duty of this court to impose a sentence that meets the facts and circumstances of the case; this court has considered the full circumstances of the offence which is contained in the Probation Officer's Report; it was reported that there had been a strained husband and wife relationship arising from the couples' alcoholism; the report noted that the convict lived a difficult life with the deceased and had on several occasions fled the matrimonial home for fear of her safety; those interviewed reported that the couple would be love birds one day and the next day would be fighting ferociously;
10. This court has taken into consideration the aggravating circumstances in the commission of the offence in that the convict used a deadly weapon namely a knife which she used to inflict the fatal injuries; but the facts narrated by the prosecution reveal that the killing was not premeditated and that on that material date the couple had been engaged in a fight and in self defence the convict had stabbed the deceased who succumbed to the injuries on the same day;

11. The mitigating factors taken into consideration by this court are that the accused readily pleaded guilty and thus saved the on judicial time; also taken into consideration are the personal circumstances of the accused that she is challenged in both speech and hearing and that she is the sole surviving parent with four (4) children to take care of; she has also expressed her remorse and is stated to have no previous record and is therefore deemed to be a first offender;

12. The offence of manslaughter is punishable by a maximum sentence of life imprisonment; however, the maximum sentence is usually reserved for the worst case scenario; the applicable law on sentence for the offence is found under the provisions of Section 205 of the Penal Code which reads as follows;

‘Any person who commits the felony of manslaughter is liable to imprisonment for life.’

13. In the light of the mitigating factors this court is satisfied that the accused is deserving of leniency and a non-custodial sentence; this court directs that she be placed under probation for a period of two (2) years.

FINDINGS & DETERMINATIONS

14. For the foregoing reasons this court makes the following findings and determinations;

(i) A non-custodial sentence is found to be an appropriate sentence;

(ii) The convict be placed under probation for two (2) years from the date hereof;

Orders Accordingly.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NYERI THIS 29TH DAY OF APRIL, 2021.

HON. A. MSHILA

JUDGE