



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL CASE NO. 36 OF 2019**

**LESIIT, J.**

**EVANS RANNY MAKAKA.....ACCUSED**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING ON SENTENCE**

1. The accused, Evans Ranny Makaka, was initially charged with the offence of **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence were that;

***“Evans Ranny Makaka on the night of 30<sup>th</sup> and 31<sup>st</sup> May 2019 at around 0200 hours at Umoja 3 Netra Plot building within Nairobi County unlawfully killed Esther Njeri Gathirimu.”***

2. After a successful plea bargaining and plea agreement, the charge was reduced to that of manslaughter contrary to Section 202 of the Penal Code. The accused pleaded guilty to the same. Section 205 of the Penal Code provides for the penalty for the offence of manslaughter. The said section provides that persons convicted of manslaughter are liable to imprisonment for life.

3. I have considered that the accused was arraigned before this court on 20<sup>th</sup> June 2019. He has been in custody for a period of one year and ten months during the pendency of his case. I have also considered that the accused pleaded guilty to the offence.

4. I have further considered the accused person’s mitigating circumstances by his counsel, Mr. Wamwayi, on his behalf. Counsel for the accused submitted that the accused was a first time offender. He urged that the accused was extremely remorseful for his actions. He urged that the deceased was the accused’s wife and that the cause of the fight between them was due to suspicions of infidelity on the deceased’s part. He stated that the accused did not intend on killing the deceased.

5. Counsel for the accused further urged that the accused person is 28 years of age and is the sole breadwinner for his family. He submitted that the accused’s parents who live in Busia depend on him for their livelihood. He also has a daughter who is five years old who is currently staying with his parents. Counsel for the accused urged that while in custody, the accused has undergone and completed a course with a Christian foundation called Prison Fellowship International that will help him with anger management. He urged for leniency in sentencing from this court.

6. I have called for a pre-sentencing report which has been filed. Both families of the deceased and the accused were interviewed. According to the report, the family of the accused stated that the death of the deceased came as a shock to them as the accused was a person of pleasant personality and related well with members of the community. The accused’s father stated that he had communicated with the deceased’s mother and had started discussions of how the two families can reconcile according to their customs.

7. The deceased mother stated that the deceased was young girl who had a bright future, and that prior to her death she was set to travel abroad for further studies. She stated that the death of her daughter caused her a lot of psychological trauma and that she is yet to come to terms with it. She acknowledges that the deceased’s father has reached out to her but he is yet to fulfil his pledge of visiting her.

8. I have taken into account the circumstances of the case. The accused stated that on 30<sup>th</sup> May 2019, he came back home from work at about midnight. He lived with deceased who was his wife. On his way up to the house, he met a man coming down the stairs. When he got to his house he found the deceased closing the door to leave. He asked her where she was going at that time of the night. She told him that she was

escorting a friend who had brought her a waiting card for her national identity card. She left the house. When she got back, she went straight to bed. The accused took her mobile phone and started going through it. The deceased woke up and asked him to stop going through her phone. A fight ensued between them. The accused hit the deceased with his hand. She fell and the back of her head hit a table. She fell unconscious on the floor. The accused wrote a note accusing the deceased of infidelity and left the house. He left the deceased lying unconscious on the floor.

9. The neighbours discovered the deceased's body two days later and called the police. The accused surrendered himself to the police at Buruburu Police Station on 3<sup>rd</sup> June 2019. A post mortem conducted on the deceased concluded that she died due to fatal head injuries.

10. The accused has admitted that he caused the death of the deceased after a domestic squabble. He acknowledges that his anger led to the death of deceased. He suspected the deceased of being unfaithful. The accused was going through her phone when a fight ensued between them. He hit the deceased and she fell. The back of her head hit the edge of the table and she sustained fatal head injuries. The deceased was a young lady aged 21 years.

11. This court further notes that when the deceased fell and injured her head, the accused did not take any steps to get her medical help. Instead, he left her lying on the floor, not sure whether she was alive or dead. He came back to the house two days later only to find that the deceased's body had been taken to the mortuary. In the circumstances, I find that a non-custodial sentence will be an option not suitable to this case.

12. Considering the circumstances of this case, the accused's mitigation, the pre-sentence report and the fact that the accused has saved the court's time and resources by pleading guilty to the lesser charge of manslaughter. Considering the period of approximately two years that the accused has been in remand custody pending this case. I hereby sentence the accused to serve six (6) years imprisonment to be calculated from today's date.

**DATED AT NAIROBI THIS 27<sup>TH</sup> DAY OF APRIL, 2021.**

**LESIT, J.**

**JUDGE**

**DELIVERED THROUGH TEAMS ON 27<sup>TH</sup> APRIL, 2021.**

In the presence of:

Accused person

Ms. Ogweno for State

Mr. Wamwayi for accused

**LESIT, J.**

**JUDGE**