



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO.30 OF 2020

LESIIT, J.

LKE.....ACCUSED

VERSUS

REPUBLIC.....RESPONDENT

RULING ON SENTENCE

1. LKE, the accused, 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:

“LKE: On the 25th day of October 2019 at around 2340 hours in Soweto slums in Njiru Sub-County within Nairobi County you murdered MMM alias M.”

2. The accused was declared fit to plead after a mental assessment was conducted. She pleaded not guilty to the offence on 15th June, 2020. However, pursuant to a plea bargain agreement with the State, the accused pleaded guilty to the lesser offence of manslaughter contrary to section 202 of the Penal Code and was convicted accordingly.

3. Learned Prosecution Counsel, Mr. Naulikha, urged that the prosecution did not have any previous records of the accused, and urged the court to treat the accused as a first offender, which I hereby do.

4. I have further considered the accused person's mitigation in court by Mr. Michuki, counsel for the accused on 7th June, 2021. The statement was written by the accused herself. In that statement, the accused said that she was remorseful for her actions. She stated that she has undergone counselling and training on anger management while in custody. She urged that she was a single mother and the sole bread winner of her three children, as well as of her deceased sister's children. She prayed for a non-custodial sentence.

5. I called for a Pre-Sentencing Report which was filed on 18th June, 2021. According to the report, the accused resided in Soweto, Kayole with her three children. She was also taking care of, and living with, two of her deceased sister's children, one of who is the victim in this case.

6. The Report includes a Victim Impact Statement which was from the uncle and sister of the accused. The uncle of the deceased told the Probation Officer that the victim was an orphan, and that the family was shocked and saddened by the death of the deceased at the hands of her aunt. He stated that the family had however forgiven the accused and were not opposed to a non-custodial sentence, desiring to leave God to deal with the accused.

7. The accused's sister, DN, described the accused as a polite person who always assisted her siblings. She told the Probation Officer that the family of the accused was shocked that she committed this crime. The accused's neighbours' who were also interviewed stated that the accused was a good person who was committed to taking care of her family.

8. When the accused was interviewed, she told the Probation Officer that she was only disciplining the deceased, and that she used excessive force which led to her death. She stated that she tried to resuscitate the deceased by pouring cold water on her, but when she realized she was dead, she panicked and fled the scene.

9. I have taken into account the circumstances of the case. The deceased, who was 14 years of age, and her brother CA (11 years old) lost their parents in 2018 and the accused took them in as their guardian. Their mother was a sister to the accused. The two children lived with the accused and her daughter, RK (8 years old).

10. On the fateful day of 25th October 2019, the accused sent the deceased to the shop to buy food. The deceased delivered the food to the house and left. She came back at 10.30 pm with her friend F. That the accused beat the deceased using a chapatti rolling pin, a sufuria and a hammer despite her asking for forgiveness. The deceased asked for forgiveness but the accused continued beating her. The accused was arrested five months, after the incident, on 20th May 2020.

11. According to a post mortem report dated 30th October 2019, the deceased died due to head injuries caused by blunt force trauma.

12. I have considered that the accused was arraigned before this court on 4th June 2020, and has been in custody for a period of one year during the pendency of her case.

13. 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 one year that the accused has been in remand custody pending this case.

14. I considered the positive side of the accused. She took in the deceased and her brother when their parents died. This was an act of kindness on her part. She had a reason to discipline the deceased. The only mistake she made was to use crude weapons and excessive force on the deceased.

15. Having considered all these relevant factors and the Probation Officer's report I am satisfied that the accused can benefit from a probation term. I have confirmed that she is willing to serve. She is sentenced to three (3) years' probation term on the conditions hereunder. The conditions are that:

i. The accused must obey the supervising Probation Officer and comply with any conditions set by the Probation Department;

ii. She must be of good conduct;

iii. She must not commit any offence during the probation period;

iv. The accused must attend guidance and counselling sessions to be organized by the Probation Department;

v. The Probation Department shall organize a reconciliation between the families of the accused and the deceased, with the assistance of the uncle of the deceased who was interviewed.

16. The accused is warned that if she breaches any of the above conditions she will be arrested and brought back to this court and the court may pass a non-custodial sentence.

DATED AT NAIROBI THIS 28TH DAY OF JULY 2021

LESIIT, J.

JUDGE

FURTHER ORDER:

17. The children of the accused and brother of the deceased witnessed the incident and saw the lifeless body of the deceased.

18. I therefore further direct that the children of the accused and brother of the deceased be referred to:

1) The Children's Officer in charge, Milimani Law Courts;

2) The said Officer to open a Child in Need of Care and Protection files for each of the four children;

3) The Children's Court to deal with the issues regarding the welfare of the children;

4) The Department of Children Services or Probation Department to organize counselling for the four children.

DATED AT NAIROBI THIS 28TH DAY OF JULY 2021

LESIIT, J.

JUDGE