



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO 81 OF 2019

REPUBLICPROSECUTOR

-VERSUS-

ANN WAMBUI OCHIENG.....ACCUSED

RULING ON SENTENCING

1. **Ann Wambui Ochieng**, the Accused, was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code, later she opted to enter into a plea bargaining arrangement with the prosecution as per the plea bargaining agreement dated 8th July, 2021 that was adopted as an order of this court pursuant to **Section 137 H** of the Criminal Procedure Code. Consequently, she was convicted of a lesser charge of manslaughter contrary to **Section 202** as read with **Section 205** of the Penal Code.

2. The facts of the case are that the accused and **Derick Mutahi Kiongori** (deceased) were boyfriend and girlfriend. On the 23rd November, 2019, the accused left her place of work, Astan bar at around 1605 hours and proceeded to the house that she shared with the deceased at plot 10 Pipeline Estate. Upon arrival she found her 2 years old daughter from a previous relationship sleeping alone on the bed, she picked the child ready to leave when the deceased asked her where she was going with the baby. She accused the deceased for not assisting her to provide for the child, when the deceased tried to restrain her from leaving the accused picked a knife from the bucket and stabbed him on the abdomen and the chest. The deceased fell down bleeding from the stabbed wound. She picked some clothes and placed them on the deceased's wound, closed the door and left the body of the deceased lying on the floor facing up.

3. The accused went to her father's house but she did not tell him of the incident, and her father gave her Ksh. 100/= to buy supper for her family. She returned to the house at 1900 hours and found the deceased lying in the same position she left him, he was unresponsive. The accused screamed to alert the neighbours who responded to her call of distress. They confirmed that the deceased was dead and called Police Officers from Embakasi who responded and moved to the scene. They found a kitchen knife with a wooden handle next to the body of the deceased which had blood stains, and took it for investigation purposes.

4. A postmortem was done and it was ascertained that the cause of death was cardiac injury due to sharp object trauma (stab wound) to the chest. A knife, the weapon ascertained to have been used to cause the injury was adduced in evidence.

5. In an endeavor to reach an appropriate sentence this court called for a pre-sentence report. The report dated 24th November, 2021 confirmed that the accused and the deceased were in a relationship for a period of one (1) year and had stayed together for 4 months. The views of the victims were obtained from the deceased's aunt and mother. The deceased's aunt indicated that the death was a big blow to the family and that the father had suffered a stroke following the death of his only son. The mother of the deceased was also mentally affected and needed to be treated carefully. She refused to have a face to face interview and was unwilling to commit herself as she had expected the matter to proceed to full trial.

6. The community was responsive and was of the view that the accused was non violent and had never been in conflict with the law. That her return was unlikely to cause breach of peace or security. The members of the community attached the actions to her young age and inexperience on relationship matters that pushed her to act irrationally.

7. The prosecution asked the court to treat the accused as a first offender as it did not have previous records in that regard.

8. In mitigation, it was urged that the accused admitted the offence and did not waste the court's time. That the accused has used the two year period she has spent in custody to reflect on her actions. That there are no aggravating circumstances to deny her a non-custodial sentence. That the accused is at her prime age and it would be prudent to release her on a non-custodial sentence to make use of her youthful energy to chart a future. That she is a mother to a four (4) years old child who lives with her mother and it would be in the interest of the minor that the accused serves a non-custodial sentence.

9. That the accused did not escape after the offence but she called for help and these facts demonstrate that she was remorseful from the time she realized the gravity of the offence she had just committed.

10. This court was called upon to be persuaded by the case of **R-Vs- Philip Muthiani Kathiwa (2015) eKLR R-Vs- Kevin Mugo (2018) eKLR** where the accused were given non-custodial sentences.

11. In addition to submissions filed by Ng'ania & Company Advocates who represented the accused, she opted to submit orally in open court where she stated that she had never committed an offence. That she has rehabilitated and had joined school while in custody and was in form four; she has been trained in counseling and she would sensitize people not to commit such offences. That she is the first born of her family and her young sister depends on her, her mother is a housewife and her father is unskilled and she seeks to be released so as to take care of her child.

12. The provisions of **Section 205** of the Penal Code enact

that:

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

13. I have been called upon to consider placing the accused on probation. Whether or not to consider a custodial or non-custodial sentence depends on circumstances of each case. The court is called upon to consider existence of aggravating circumstances if any, and the mitigating factors (Also see Sentencing Policy Guidelines)

14. Though the accused has expressed remorse, is a young adult, and first offender, it is apparent that she used a knife to injure the deceased. Although the prosecution did not address this court on aggravating circumstances, it would be erroneous to conclude that the factors working against the accused do not exist in this case. The facts are clear and have also been highlighted in the presentencing report with the statement that the deceased's family was seriously affected, that the deceased's father relocated from Pipeline and got a stroke, his mother has suffered mental instability. These are events that were linked to the murder of their son and demonstrates the serious impact of the accused's action which led to loss of an innocent life and the only son to the surviving family.

15. **Section 333(2)** of the CPC provides thus:

Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

16. The accused has spent two years in custody and has urged that she has rehabilitated, the probation officer has not addressed this court on her efforts or successful rehabilitation in the two-year period she has been in remand. The probation officer indicated an intention to commence her rehabilitation process once she is released on a non-custodial sentence. Therefore, there is no evidence that she reformed during the two (2) year period she was in custody.

17. **Section 4** of the Probation of Offenders Act (**Cap 64**) provides that before making a probation order under sub-**Section (1) or (2)** the court may consider the view of the victim as contained in the pre-sentence report. From the facts, there is no suggestion that the deceased was a threat to the accused therefore she simply acted irrationally and had an opportunity to prevent the death but unfortunately acted at the spur of the moment.

18. She did not call for help immediately after stabbing the deceased, she left him bleeding and suffering from the fatal stab wound. She returned at 1900 hours which was about three hours after the event. In the case of **Omuse -vs- R (2009) KLR 214**, the court held that:

“Sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and the proper exercise of discretion in sentencing requires the Court to consider that fact and circumstances of the case in their entirety before settling for any given sentence”

19. A comparison with other sentences meted out show that courts have meted out sentences outside the maximum sentence of life imprisonment for manslaughter. In the case of **Stephen Mwai Ndeti & Another (2018) eKLR** the accused killed their son and pleaded guilty to the offence of manslaughter, **Odunga J.** sentenced them to six (6) months' probation and also noted that there was reconciliation.

20. In the case of **R -vs Juliana Wanza Mulei (2020) eKLR Kemei J.** sentenced the accused to 10 years imprisonment and discounted 1/3rd of the period, the accused was to serve two (2) years. In that case, the accused and the deceased were lovebirds and had engaged in frequent fights. She was acting in self defence and the accused had four (4) children and was 35 years old. The court further set off the 2-year period she had already spent in remand and set her free.

21. In the case of **R -Vs- Jared Onyoni Maina(2021) eKLR, Ougo J.** sentenced the accused to ten (10) years imprisonment. In that case the accused pleaded guilty to manslaughter, he stated during mitigation that he was drunk and that he would stop taking alcohol. He was 39 years old and had four (4) children.

22. In this case, there is no evidence of any reconciliation having taken place and there would be nothing wrong with the accused being rehabilitated under the custody of the correctional facilities. That would be the best place to meet all applicable objectives of sentencing which include deterrence, retribution and reformation. It would also ensure justice for the victim is served.

23. For reasons given, I sentence the accused to seven (7) years imprisonment, having taken into account time spent in custody.

24. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY,

THIS 16TH DAY OF DECEMBER, 2021.

L. N. MUTENDE

JUDGE

IN THE PRESENCE OF:

Court Assistant – Mutai

ODPP – Mr. Okeyo

Accused

Ms. Ngania for Accused