



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA

CORAM: R. MWONGO, J.

CRIMINAL CASE (MURDER) NO. 19 OF 2017

REPUBLIC.....PROSECUTOR

-VERSUS-

JAMES NJENGA NJOROGE.....ACCUSED

JUDGMENT ON SENTENCING

1. The accused is charged with the murder of his wife Nancy Wairimu Gathoni between 29th March and 1st April 2017. After a full trial this court on 7th October 2019 convicted the accused of Manslaughter contrary to **section 202** as read with **section 205** of the **Penal Code**. The details of the accused's action and the manner of the deceased's death are in the judgment of 7th October 2019.
2. The mitigation hearing was held on 25th November, 2019. The court having ordered a Probation Officer's pre-sentence report, the same was availed in court at the mitigation hearing.
3. Counsel for the accused, Mr. Wairegi, stated that the accused was 28 years old - a young age - with his whole life ahead of him. He urged the court to take into account the accused's age and his expected contribution to society. Counsel stated that the accused's family relied on the accused for sustenance and that his continued incarceration continues to impoverish the family.
4. Counsel asked the court to take judicial notice that the incident leading to the death emanated from an incident of alcoholism; that the accused is willing to enter into a rehabilitation programme to handle his alcoholism; that the accused should be given a non-custodial sentence and that the accused has no previous records of offences.
5. As regards the Probation Officer's report that the accused was unsuitable for a non-custodial sentence due to bitterness of the community, counsel said the offence occurred in April 2017, and the accused has remained incarcerated. Thus, sufficient time has elapsed and the victims and the society would have since healed.
6. Finally, counsel notified the court that the accused would be willing to relocate to another region; that he has relatives in Kitale who are willing to take him in there; and that the duration of his current incarceration should be taken into account by the court.
7. The court has carefully considered the mitigation presented by the accused. The court has also carefully considered the Probation Officer's Report dated 25th November 2019.

8. The Probation report notes that the accused is a casual worker who attributes the offence to his being under the influence; that the accused has no known role in the community, and that the community is still hostile to the accused.

9. As regards attitudes towards the offender, the report states that:

“The victim’s relatives are still bitter and unwilling to forgive.”

10. The report further notes that the accused comes from a low socio-economic background; that the accused readily admits his offence and regrets his action; that on the day of the incident both the accused and the victim were drunk and got into a fight that resulted in the fatality; that he has learnt his lesson and promises to change having been in remand for two years.

11. The Probation Officers conclusion and recommendation are as follows:

“In my view a non-custodial sentence is not wise idea given the community attitude and the sentiments of the victim’s family..... In light of the above findings the accused person is unsuitable for a non-custodial sentence. May the honourable court use other corrective measures it deems fit.”

12. As earlier noted the court convicted the accused for manslaughter. The court found that the accused and his wife had been out drinking. On returning home they got into an argument. The accused said that the deceased slapped him; that he pushed her and she fell on a gas cylinder. The court however found that the deceased had injuries on the arms suggesting that she had had to defend herself; and that the single fatal blow to her head was occasioned by the accused. The *mens rea* or malice aforethought for murder was absent, and manslaughter was therefore found against the accused.

13. The accused admitted that when he woke up after the incident and found she was cold, he was confused and ran away, instead of reporting the fact and facing the consequences. The incident occurred on 28th February, 2017. He was finally arrested on 10th October 2017. It is not surprising, then, that the community and deceased’s relatives are bitter with him. They could possibly even harm him.

14. The evidence concerning the arrest was that the accused had fled to Kiambogo, and then was found at Ndemi Scheme in Kipipiri about 50 kilometres away from the scene. He had a packed bag and, according to the arresting officer he was planning to flee. He did not give himself in, and did not admit what he had done. This is not a case where remorse can be said to be evident.

15. **Section 205** of the **Penal Code** prescribes at the sentence for manslaughter:

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

This provision gives the court discretion to impose the full or a lesser sentence.

16. This court’s role in mitigation sentencing is to balance the seriousness of the sentence with the facts and circumstances of the offence in light of the facts circumstances and environment surrounding offender.

17. In considering whether to impose custodial or non-custodial sentence in a case such as this one, The Judiciary Sentencing Policy paragraph 7.19 requires the court to take the following into account:

- a) the gravity of the offence.
- b) the criminal history of the offender.
- c) the character of the offender.

d) the protection of the community, and

e) the offenders responsibility to third parties.

18. I have taken all the above matters into account and pointed out some of the emergent issues. I agree with the Probation Officer that this is not a suitable case for a non-custodial sentence given the outlook of the community and possibilities of harm by the community to the accused. Having considered all matters as stated, I hereby sentence the accused imprisonment for eighteen (18) years. The term commences on the date of his first incarceration on 10th October, 2017.

19. Orders accordingly.

Dated and Delivered at Naivasha this 27th Day of January, 2020.

RICHARD MWONGO

JUDGE

Delivered in the presence of:

1. Ms Abuga for the State
2. Mr. Wairegi Advocate for the Accused
3. Accused - James Njenga Njoroge - present
4. Court Clerk - Quinter Ogutu