



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 77 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

DMW.....ACCUSED

SENTENCE RULING

1. On 01/07/2014, the Accused Person, DMW had insisted that he be left in the care of his two children – MN – aged six – and S – aged three. The Accused Person was in the midst of serious marital turmoil. Relatives from both sides of the family were against the marriage between the Accused Person and his then wife, MWM.

2. The Accused Person had reached the end of the tether. He decided to do the unspeakable: he would kill both the children and himself. He forced his two children to take Diazinon and dimethoate which are both organophosphorous pesticides. He then took the same poison himself.

3. A few minutes later, MN was dead. The Accused Person and his other child, SW, were in critical conditions. The Accused Person and S survived.

4. The Accused Person was charged with the murder of MN contrary to section 203 as read with section 204 of the Penal Code. In a judgment dated 18/07/2019, this Court found the Accused Person guilty of the offence as charged.

5. This is a ruling with respect to the appropriate sentence to mete out to the Accused Person.

6. According to the *Judiciary Sentencing Policy and Guidelines* (See para. 4.1), a Court imposes a sentence on an offender for one or more of the following purposes:

- a. To ensure that the offender is adequately punished for the offence;
- b. To deter the offender or other people from committing the same or similar offences;
- c. To protect the community from the offender;
- d. To rehabilitate the offender;
- e. To denounce, condemn or censure the conduct of the offender;
- f. To restore justice and relations by making the offender accountable for his or her actions and to recognize the harm done to the victim of the crime and to the community.

7. Arising from these purposes, a number of principles underpin the sentencing process and must be borne in mind in crafting an appropriate sentence in a given case. They include the following three:

- a. *Proportionality*: that the overall punishment must be proportionate to the gravity of the offending behaviour;
- b. *Parsimony*: that the sentence must be no more severe than is necessary to meet the purposes of sentencing;

c. *Parity*: the principle that similar sentences should be imposed for similar offences committed by offenders in similar circumstances

8. Ultimately, as many courts have pointed out, the fundamental and immutable principle of sentencing is that the sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed and the circumstances of the crime committed.

9. The Prosecutor, Mr. Chigiti, urged the Court to give a stiff sentence. While conceding that the Accused Person is a first offender, Mr. Chigiti argued that the Accused Person not only killed one of his children but rendered another of his children critically ill; and almost killed her. He asked the Court to consider the impact the actions of the Accused Person have had on his former wife and the remaining child who will likely be traumatized for life after being forced to take poison. Mr. Chigiti recommended a sentence of twenty-year imprisonment.

10. On his part, the Accused Person and his advocate, Ms. Mungai urged the Court to be lenient and to consider the time served as sufficient incarceration. They asked the Court to consider that:

- a. The Accused Person was remorseful and that he really regretted his actions;
- b. The Accused Person has made attempts to reach out to his former wife to ask for forgiveness;
- c. The Accused Person is a first offender;
- d. The Accused Person was the sole bread winner of his extended family which relied on him as he is the first born of a single mother; and
- e. The actions by the Accused Person were a result of extreme pressure from his marital turmoil.

11. I have considered all these aggravating and mitigating factors. I have also considered the Pre-Sentence Report filed by the Department of Probation and After Care Services. The Report is generally favourable to the Accused Person. It tells the story of a young man who found himself in a tough position in life without many tools to deal with it. Murder suicide was his unfortunate response to the dire situation he found himself in.

12. I accept that the Accused Person is demonstrably remorseful; and that he has had time to reflect on his actions. He says he has learnt his lessons. I also accept that the Accused Person was driven to snapping point just short of insanity which would have negated *mens rea* in the case. The attempt to commit suicide points to a deeply troubled person. One hopes that in Prison the Accused Person has found his stability. He claimed he has.

13. All in all, I am persuaded that it is important to balance the need for societal condemnation of the acts of the Accused Person and the need to consider the weighty mitigating factors in the case. After so doing, I hereby sentence the Accused Person to:

- a. Ten years imprisonment; and**
- b. Thereafter, three years of probation.**

14. The prison term shall be computed commencing from 07/07/2014.

15. Orders accordingly.

Dated and delivered at Nakuru this 27th day of February, 2020

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JOEL NGUGI

JUDGE