



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**CRIMINAL CASE NO. 12 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**MARY NDORO ZIRO.....ACCUSED**

**Coram: Hon. Justice R. Nyakundi**

**Ms. Sombo for the State**

**Ms. Ruttoh for the Accused person**

**SENTENCE**

The accused was charged with manslaughter contrary to Section 202(1) as read with Section 205 of the Penal Code Chapter 63 of the Laws of Kenya. The allegation is that the offender unlawfully and unintentionally killed the deceased on the night of 19<sup>th</sup> of July 2017 at Madumadu village, of Jilore location, Malindi Sub County within Kilifi County.

The court convicted the offender on his own plea of guilty to the offence of manslaughter on a charge prepared following the acceptance by the court of the plea agreement pursuant to section 137H of the Criminal Procedure Code (CPC), upon being satisfied of the factual basis of the plea agreement and that the accused was at the time of the agreement competent, of sound mind and had acted voluntarily in terms of Section 137G of the CPC.

The factual matrix of the matter is such that the offender is a mother of three children including the deceased, which she sired with three different men. The offender abandoned her second marriage on claims of abuse by her former husband who was the father to the deceased. She then left the deceased with her parents while she went to look for a job. While at work, she met her current husband, whom she sired her third born child with.

When the offender got married to her current husband, she did not disclose about the existence of her deceased son. She asserted that when her current husband came to know about the deceased, the issue would cause squabbles each time it would come up. The sequence of events which led to the death of the deceased were that, the offender sought permission from her husband to go to her parents' home to fix some domestic issues. When she arrived at her parents' house, she sought their permission to take her with her claiming that she wanted to live and look after him at her current husband's home.

The offender collected all of the deceased's belongings including documents and clothes in the presence of her mother and brother. The offender's mother informed the offender's current husband about the departure of the offender and the testimony of the offender's husband is that the offender arrived home at around 2000hrs without the deceased.

It was after an interrogation by police officers and positive identification of the deceased's body which was found in a drainage system, that the offender voluntarily confessed that indeed murdered the minor. The deceased, a year-old boy, was found blind folded with a yellow t-shirt covering his face with visible injuries on the head and back.

In assessing an appropriate sentence, the court has taken into consideration the totality of mitigating factors and sought to weigh them vis-a-vis the aggravating factors at the same time seeking to strike a balance on the nature of the offence, murder with malice aforethought and the offender, his personal circumstances and societal interest, that justice must not only be done but must be seen to be done.

Society requires protection from dangerous criminals and in fact the society looks up to the court to do justice not condone crime in a manner which would intrigue society into losing confidence in the whole justice delivery system. The court shall also consider the pre-sentence time

of incarceration will be taken as part of punishment already served and suffered. I shall not lose sight of the pre-trial and during trial, incarceration period.

When sentencing convicts, in as much as sentences ought to be meaningful to convicts Court's need not only focus on the convict's degree of liability or the ghastly manner in which the offence was committed. Instead, the Court should also take into consideration amongst others the personal and individual circumstances of the offender as well as the possibility of reform and social re-adaptation of the convict. Thus it is an accepted legal principle that sentences should befit the offender and in this respect, the Court should take into consideration mitigating factors that may avail the convict.

The felony of manslaughter is punishable by the maximum sentence of life imprisonment under Section 205 of the Penal Code Act. Nevertheless, this embodies the maximum punishment which is usually reserved for the worst of such cases. The instant case falls within ambit of the most extreme cases of manslaughter. However, for the reason I shall discuss below, I therefore discounted life imprisonment.

In assessing an appropriate sentence, the court has to take into consideration the totality of mitigatory factors and sought to weigh them *vis-a-vis*

It is so ordered.

14 days right of appeal.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 11<sup>TH</sup> DAY OF MARCH , 2020**

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**R. NYAKUNDI**

**JUDGE**