



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

HIGH COURT CRIMINAL CASE NO. 73 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

LUCAS WANYAMA ZAKAYO.....ACCUSED

SENTENCE

1. The convict was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code to which he pleaded not guilty.
2. By a plea bargain agreement signed and dated 13/6/2016 and accepted and recorded in court on 24/10/2019, the said charged were reduced to the lesser charge of manslaughter contrary to **Section 202** as read with **205** of the Penal Code, to which the same pleaded guilty and was duly convicted on his own plea of guilty.
3. The particulars of the offence to which the convict pleaded guilty were that, on the material day the convict and the deceased who were living together as husband and wife started arguing about the responsibility of providing for the family and in the process the convict kicked a kerosene stove which fell on the deceased thigh, when her clothes caught fire and she started screaming for help, her neighbours came to her rescue and helped in putting off the fire. She was rushed to a local hospital where she was treated and discharged. Her condition thereafter deteriorated and was taken to Kenyatta National Hospital where she was admitted on 12th January, 2016 and on 21st August, 2016 succumbed to the injuries.
4. The convict had initially been charged at Kibera Law Court with the offence of assault which was thereafter upon the death of the deceased substituted with murder.
5. In compliance with the Judiciary Sentencing Policy Guidelines and the Supreme Court determination in the case of **FRANCIS K. MURUATETU & Another V REPUBLIC [2017] eKLR**, the court allowed the convict to mitigate and called for pre-sentencing report for purposes of sentencing hearing.

MITIGATION

6. It was stated by Mr. Mathenge on behalf of the convict in mitigation, that he same was a father of three children aged fourteen (14) and ten (10) years respectively, one having died. He had been married to the deceased for a period of Ten years. It was contended that the offence was committed out of anger and therefore regretted the fact that it caused the death of the deceased. He was remorseful noting that they had been in relationship since their teenager years. He was remorseful having been in custody for three years and therefore sought non-custodial sentence.
7. Mr. Okeyo submitted that the accused should be treated as a first offender but consideration placed on the pre-sentencing report, in particular the sentiment of the father of the deceased, that the accused attitude towards them was not honourable before the incidence.

PRE-SENTENCING REPORT

8. It was stated that at the time of his arrest, the convict was engaged in various casual jobs such as plumbing and masonry at construction sites in Karen Area of Nairobi. He had been married to the deceased and their children were living with their maternal grandfather after the death of their mother. He stated that they related well save for isolated incidence when they quarreled over finances and allegations of infidelity. The father of the deceased stated that the accused was abusive and violent and several attempts to reconcile the two was not

successful. It was stated that the accused used to smoke two rolls of bhang at the time of the incidence.

CIRCUMSTANCES OF THE OFFENCE: The accused alleged that he came home drunk when the deceased confronted him with allegations that he was cheating on her. He was overwhelmed with her verbal abuses which led him to slap her sending her to the ground.

ATTITUDE TOWARDS THE CRIME:- He was remorseful and regretted the circumstances leading to the offence. He demonstrated his remorse by taking the deceased to hospital and taking care of her before his arrest.

FAMILY VIEW He was raised solely by his father. He was supportive of the family by providing financial support to them. They sought lenient sentence.

VICTIM IMPACT STATEMENT: The deceased was the firstborn in her family. Upon the admission of the deceased to hospital, the family approached the accused family for reconciliation but was not successful. They had to shoulder the entire bill of eight (8) months. The accused daughter stated that they had to move from their previous school to a relatively cheaper school. She indicated that her father was the cause of his predicament and should not be treated leniently. The deceased father was of the view that if granted non custodial sentence, the court should give the convict stern warning against interfering with his family.

In conclusion it was stated that the accused was ready to change if granted second chance and should he be granted probation sentence, the probation office will rehabilitate him by offering counseling sessions on alcohol and drug abuse, marital counseling and anger management.

9. The sentencing objectives as per the Judiciary Sentencing Policy Guidelines are:-

1. **Retribution:** to punish the offender for his/her criminal conduct in a just manner.
2. **Deterrence:** to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. **Rehabilitation:** to enable the offender reform from his/her criminal disposition and become a law abiding person.
4. **Restorative justice:** to address the needs arising from the criminal conduct such as loss and damages.
5. **Community protection:** to protect the community by incapacitating the offender.
6. **Denunciation:** to communicate the community's condemnation of the criminal conduct.

10. In this case, the convict and the deceased had been married for ten (10) years. They allegedly started their relationship while they were minors – the convict aged 17 years while the deceased was aged 15 years at a time when they were supposed to be playing “kalongolongo” “chamama”. They had three children. Their marriage was characterized with isolated incidences of quarrels over finance and allegation of infidelity. According to the father of the deceased, the accused was disrespectful.

11. The deceased was in hospital for a period of eight (8) months before she died and must have therefore suffered great pain, having sustained septic third degree burns on the lower limbs. Her father had to take a loan of Kshs.637,981.50 to offset hospital bills.

12. Whereas the convict has sought for non-custodial sentence, this court has said and shall continue to say that all married persons but women in particular have a right to choose their own destiny and until this message is spread and applied consistently at all levels of the justice system, more women will continue to die in the confines of their homes, where they expect love and comfort and the perpetrators will continue to thumb their nose at the law by evading appropriate sentence and the right to equal treatment guaranteed in our constitution will be but a mirage.

13. This court must say no to all forms of domestic violence by sending a message that those who kill in family setting will be and must be sentenced to a lengthy period of imprisonment to as to protect the community and to act as a deterrence to would be offenders.

14. Whether the convict came from a broken family background and was taking drugs and whether the deceased had accused him of infidelity was not a good ground for him to set the deceased on fire by kicking the cooking stove. The fact that they started their relationship as teenagers was the more reason for the convict to treat the deceased with respect since he robbed her of her innocence. He must pay for her death.

15. I have taken into account the fact that the convict entered into a plea bargain Agreement and that the same has been in custody since November, 2016 and is of the considered opinion that both a deterrence and rehabilitative sentence is appropriate. I would therefore sentence the same to a term of ten (10) years to be served as follows:-

a. The first seven (7) years backdated to the 2/11/2016 imprisonment so as to act as a warning to the convict and would be offenders that crime does not pay.

b. Three (3) years thereafter on probation so as to rehabilitate the offenders further and to integrate him back to society during which period of time he shall not interfere with the victim's family as they have indicated that they have since

“moved on”.

c. Any contact with the victims family including his children can only be done with the consent and approval of the probation officer who shall be in charge of his rehabilitation.

d. Both the convict and the State have right of appeal on the sentence herein.

It is so ordered.

Dated, signed and delivered at Nairobi this 10th day of March, 2020.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Okeyo for the State

Mr. Mathenge for the Accused

Accused person present

court clerk: Karwitha