



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 6 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**IRENE KERUBO WAMBUA.....1<sup>ST</sup> ACCUSED**

**BRIAN MUGUCHE WAMBUA alias WA BABA.....2<sup>ND</sup> ACCUSED**

**RULING ON SENTENCE**

Irene Kerubo Wambua, the 1<sup>st</sup> accused and Brian Muguche Wambua alias Wa Baba, the 2<sup>nd</sup> accused, are jointly charged with manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The victim is David Wambua Nzuki. The offence is alleged to have been committed on 20<sup>th</sup> day of January 2017 at about 5.00pm at Mukuru Kwa Njenga in Embakasi Sub-County within Nairobi County. The charge of manslaughter was substituted on 6<sup>th</sup> December 2018 following a plea bargaining agreement between the two accused persons and the prosecution. Both had initially been charged with murder contrary to section 203 as read with section 204 of the Penal Code which they had pleaded not guilty to.

On 19<sup>th</sup> February 2019 the two accused pleaded guilty to manslaughter. The prosecution counsel presented facts of this case. The facts show that on 20<sup>th</sup> January 2017 a domestic argument ensued between the deceased and the 1<sup>st</sup> accused that lived together as man and wife. A fight broke out between the two. The 2<sup>nd</sup> accused picked a stone and hit the deceased several times on the head while the 1<sup>st</sup> accused held the deceased's hands to prevent him from defending himself. The deceased died the following day on 21<sup>st</sup> January 2017. The matter was reported at Mukuru Kwa Njenga Police Station. The two accused surrendered to the police at the same Police Station and were placed in custody. After investigations were completed the two were charged with murder now substituted to manslaughter. The body of the deceased was examined by Dr. Peter Muriuki Ndegwa on 26<sup>th</sup> January 2017. He found out that the deceased had died due to head injury due to blunt force trauma. The post mortem report was produced as Ex. 1. After the presentation of the facts, each accused person admitted that the facts as presented were correct. Consequently, this court entered a plea of guilty and convicted each accused for the offence of manslaughter.

In mitigation the 1<sup>st</sup> accused told the court that she was remorseful and regrets causing the death of the deceased. She said she is a first offender and a mother of the 2<sup>nd</sup> accused and another child aged 5 years who is in the custody of the elderly parents of the deceased. She told the court that both families have met and agreed to forgive each other and that they have made peace. She said she has been in custody since January 2017 when she was arrested to date and that during her time in custody she has learned courses that would assist her in life. She asked the court to give her a non-custodial sentence.

The 2<sup>nd</sup> accused mitigated that he is a minor who was arrested when he was in Standard 7 and that he is eager to seek admission in school to complete his school. The probation report indicates that the 2<sup>nd</sup> accused is 16 years old. He told the court that he is remorseful and regrets assaulting the deceased and causing his death. He said that the family has met and made peace with him. He said that he is a first offender and has been of best behavior while in custody. He urged that this court gives him a non-custodial sentence.

I have considered the two reports filed by the probation office. Both reports are favorable and are not adverse to any of the accused persons. I have considered the mitigation of each accused. It is clear to me that the 2<sup>nd</sup> accused is not the biological son of the deceased and he was born before the deceased and the 1<sup>st</sup> accused started living together as man and wife. I have noted that the parents, deceased and 1<sup>st</sup> accused were fighting after a domestic disagreement and this prompted the 2<sup>nd</sup> accused to attack the deceased in a bid to rescue his mother the 1<sup>st</sup> accused. It is unfortunate that the mother, the 1<sup>st</sup> accused, held the hands of the deceased to ensure that he did not defend himself.

I have considered the unfortunate circumstances leading to the death of the deceased. I have considered the mitigation of each of the two accused persons and noted their remorse for causing the death of the deceased. It is not lost to me that death of the deceased has occurred and nothing can be done to bring him back. It is saddening that the deceased died in the hands of his family members who stand to suffer as a result of that death that has deprived them of the breadwinner. This death will haunt them all the days of their lives. In my view, the appropriate sentence for each is as follows:

- (i) The first accused person Irene Kerubo Wambua shall serve (2) two years' imprisonment after which she will be placed under supervision of a Probation Officer for a further two (2) years during which time she will undergo counseling.
- (ii) The second accused person Brian Muguche Wambua shall be placed under the supervision of a Probation Officer for three (3) years during which time he will undergo counseling and rehabilitation to school.

The accused persons have a right of appeal, which has been explained to them, within 14 days from today's date. Orders shall issue accordingly.

**Delivered, dated and signed this 21<sup>st</sup> February 2019.**

**S. N. Mutuku**

**Judge**