



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HCCRC NO. 43 OF 2017

LESITT, J

REPUBLIC.....PROSECUTOR

VERSUS

MARY NZUNGI KIVOU.....ACCUSED

RULING ON SENTENCE

1. The accused **MARY NZUNGI KIVOU** was convicted of **Manslaughter** contrary to **Section 202** of the **Penal Code** after she pleaded guilty to the charge. This followed a successful Plea Bargaining with the prosecution which culminated with the reduction of the Murder charge contrary to **Section 203 of Penal code** to Manslaughter contrary to **Section 202** of the **Penal Code**.
2. The accused was arraigned in court on the 14th September, 2017 and was in custody for a period of 4 months before she was released on bail.
3. The State has treated the accused as a first offender.
4. Ms Ajiambo counsel representing the accused urged in mitigation on behalf of the accused that the accused had accepted to plead guilty to the lesser charge of manslaughter therefore saving the court time. Counsel urged that the accused was remorseful for her actions.
5. Counsel urged that the accused is aged 27 years old, mother of two minor's aged 4 and 9 years. Further to that, she is self employed and the sole bread winner of the two children.
6. This court called for a pre-sentence report. The Report was filed and I have considered it. I have noted that the accused admits the offence and regrets the events of the material day that led to the demise of her husband and father to her children. She states that she acted out of anger and seeks for forgiveness and a second chance so that she can take care of her children. The report shed light on the fact that the accused was a mother of two children, one aged 9 years and the other 5 years who were under the care of her parents in law.
7. The Victim Impact Statement was incorporated in the pre-sentence report. I noted that the family members to the deceased reported that the deceased had a drinking problem which led to constant fights that strained their relationship with the accused person. I have also noted that the accused organized a function so as to seek forgiveness from the deceased parents (her parent's in-law) and that gesture was highly welcomed. The report states that the family forgave her.
8. I have considered the circumstances of this case. From the facts filed in the plea agreement, the accused and deceased person were husband and wife. That on the fateful day, the deceased got home drunk and picked a quarrel with the accused. A fight ensued and as they were fighting, the accused picked a knife and stabbed the deceased on the neck. Upon realising that the deceased was injured the accused raised an alarm and the neighbours responded.
9. The Probation Officer has recommended a non-custodial sentence for the accused. She based her recommendations having regard to the fact that the in-laws have forgiven the accused and described her as a blessing to their family. The fact that the relatives from both sides of the family are ready to vouch for her and her attitude towards the offence. The report has proposed that the accused undergoes anger management counselling and impacting of positive life skills.
10. The prosecution produced the post mortem report on the deceased. The cause of death was opined to have been exsanguination due to penetrating sharp force on the neck. I find this finding consistent with the facts alluded to in the Plea Agreement.

11. The sentence for the offence of manslaughter is prescribed under **Section 205** of the **Penal code** as life imprisonment. I however take cognisance of the fact that the accused is remorseful and sought forgiveness from the family of the deceased. The family of the deceased have also demonstrated that they are not opposed to the accused being given a non-custodial sentence

12. I have considered the fact that the accused had been in custody for 4 months before being released on bail, pending her trial. I have also considered the fact that the accused is youthful, being 27 years. I have also considered that the accused has saved the court considerable time by pleading guilty to the lesser charge of manslaughter.

13. I have considered the fact that the accused approached her in-laws and sought forgiveness from them after she committed the offence. Her action and the gesture of forgiveness by the victim's family is commendable. The fact that the children are under the care of her in-laws and they vouch for her so that she can continue supporting them has been noted.

14. Having taken all these factors into account, I find that the accused deserves a second chance. The Probation Officer has elaborated as much in her recommendations.

15. The accused has expressed willingness to serve a probation term.

16. The accused is warned that being sentenced to a probation term is a sentence in its own right and is not a discharge. I have explained the conditions under which the accused will serve this sentence which are:

(a) That she must serve under the supervision of a Probation Officer and that she must comply with terms and conditions set by the Probation Officer supervising her and abide by the instructions given.

(b) That she must be of good conduct and must not commit any offence during the probation period.

(c) She must keep company with persons of good character.

(d) She must attend anger management counselling and guidance sessions to be organized by the Probation Department.

17. The accused was asked whether she was willing to serve a probation term to which she has answered in the affirmative.

18. The court has warned the accused that she must not violate any of the conditions set above and that if she breaches any of them, she will be arrested and back to this court for re-sentence.

19. **Having agreed to serve a probation term. I now sentence the accused to a Probation term of 3 years.**

DATED AT NAIROBI THIS 25TH DAY OF JULY, 2019.

LESITT, J

JUDGE