



**REPUBLIC OF KENYA**

**HIGH COURT AT NAIROBI**

**CRIMINAL CASE NO. 3 OF 2017**

**LESITT, J**

**REPUBLIC.....PROSECUTOR**

**V E R S U S**

**WMN.....ACCUSED**

**RULING ON SENTENCE**

1. The accused **WMN** was initially charged with one count of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. She pleaded not guilty to the charge on the 28<sup>th</sup> of February 2017.
2. I have noted that there were several attempts by the defence to have the parties enter a plea agreement from the onset of the trial. The 1<sup>st</sup> offer was made on 7<sup>th</sup> June 2018 and the prosecution declined the plea bargain offer on 27<sup>th</sup> June 2018. This necessitated the trial to commence and a total of 6 witnesses were heard. The prosecution thereafter approached the defence and offered to plea bargain on 29<sup>th</sup> May 2019 and this time round the accused rejected the offer.
3. On 10<sup>th</sup> July 2019 the court was informed that plea bargaining was agreeable to both parties. On 22<sup>nd</sup> July 2019, the parties filed a plea agreement dated 19<sup>th</sup> July 2019. Consequently, the charge against the accused was reduced from **Murder** contrary to **Section 203** of the **Penal Code**, to **Manslaughter** contrary to **Section 202** as read with **Section 205** of the **Penal Code**. The accused pleaded guilty to the lesser Charge of **Manslaughter** contrary to **Section 202**.
4. The prosecution through learned Counsel Ms. Gichuhi urged the court to treat the accused as a first time offender since they had no previous records on the accused. I have treated the accused as a first offender.
5. Learned defence counsel Mr. Mathenge gave mitigation on behalf of the accused. Counsel urged that the accused was remorseful for her actions that led to the deceased death. Counsel urged that the accused acted out of anger and in defence of her mother who was under verbal and physical attack from the deceased and his brother.
6. Counsel urged that the accused was 17 years old when she committed the offence and was now aged 20 years. Further, counsel urged that the accused was now a mother of a 2 year child whom she bore while in custody. Counsel urged that the accused is from a humble background and together with her husband they used to work in a hotel. Counsel urged that the accused needs to take care of her family and further support her siblings who are still in school.
7. Counsel urged that there were no prior misunderstandings between the accused and the deceased. He further urged that the accused was in custody since January 2017 to August 2018 when she was released on bail and that the accused sought a non-custodial sentence.
8. This court ordered for a pre-sentence report. A report was filed by one Ms. Abima, Probation Officer. It is dated 7<sup>th</sup> August 2019 was filed in court on 8<sup>th</sup> August 2019. I have considered the report. The report explains the accused personal background and family circumstances. It is stated that the accused failed to proceed to secondary school due to lack of school fees, a fact that necessitated her to be employed as a house help. The accused mother has vouched for her daughter and stated that she is willing to assist the accused in her rehabilitation, re-integration and re-settlement if granted a non-custodial sentence.
9. A statement from the village elders who were interviewed on behalf of the community stated that they had no reservations to the accused benefiting from a non-custodial sentence. They however stated that the accused should avoid Soweto area where the offence occurred because a section of the populace could be unwelcoming.
10. A Victim Impact Statement by the deceased wife was incorporated in the report. She brought to light the fact that the deceased was a

young man aged 32 years and a father of 3 children who were aged 2 years, 7 years and 9 years at the time of his demise. The wife to the deceased indicated that the death of her husband was a big blow and that raising the children had become a challenge owing to the fact that the deceased was the sole bread winner. She further stated that she had lost the 9 year old who passed on early this year and that she was contemplating relocating upcountry.

11. The wife to the deceased however stated that she nevertheless harbors no ill feelings against the accused. She stated that she had persuaded the deceased to forgive the accused before his demise. She also stated that she had no issue if the accused is granted a non-custodial sentence.

12. The Probation Officer has recommended that the accused be granted a non-custodial sentence given the accused attitude towards the offence, the vouching of the accused by her mother, that of the village elders as well as the fact that the victims had no reservations for a non-custodial sentence being awarded.

13. I have considered that the accused has pleaded guilty to a lesser charge thus saving the court precious time. I have considered that the accused was in custody for a period of 1 year and 7 months before she was released on bail. I have also considered that the accused was a minor aged 17 years when she was first brought to court, meaning she was a child when she committed this offence. **Section 191** of the **Children Act** applies to this case.

14. I have considered the circumstances of the offence. The accused hit the deceased with a stone as she tried to defend the mother who was under both verbal and physical attack from the deceased and his brother. The deceased was treated for the head injuries he suffered and discharged the same day. He later died while undergoing treatment at Kenyatta National Hospital where he had been admitted after his health had deteriorated several days after the attack.

15. The facts show that the accused was not part of the initial confrontation between her mother and the deceased. The accused seemed to have acted on the spur of the moment. She acted in defence of the mother who was under attack.

16. The sentence for the offence of **manslaughter** is prescribed under **Section 205** of the **Penal Code**.

**205 "Any person who commits the felony of manslaughter is liable to imprisonment for life"**

17. As I have already stated herein above, the accused was 17 years of age at the time of the commission of the crime. The accused was a child under the **Children's Act**. **Section 191** of the **Children Act** sets out methods of dealing with child offenders. **Section 191(1)** of the **Children's Act** prohibits any form of imprisonment or detention of children.

18. I find that a non-custodial sentence is the only one the court can consider in this case. The accused was a minor when she committed the offence. She acted at the spur of the moment as she defended the mother who was under attack from the deceased. The case is clear she acted in the defence of her mother. Both under law and in the circumstances of the case, the court has no other choice of sentence which presents itself to be the most suitable to be imposed in this case.

19. Having taken all these factors into consideration, I find that the accused deserves a second chance. The Probation Officer has recommended as much in her recommendations. The court will determine the non-custodial sentence once the accused agrees to serve that sentence.

20. I have confirmed and the accused has expressed willingness to serve a probation term. I have given the usual caution and warnings regarding this sentence including the following:

- a) **The accused is warned that being sentenced to a probation term is a sentence in its own right and is not a discharge.**
- b) **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.**
- c) **That she must be of good conduct and must not commit any offence during the probation period.**
- d) **That She must keep company with persons of good character.**
- e) **That she must attend anger management counselling and guidance sessions to be organized by the Probation Department.**

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

22. **Having agreed to serve a probation term. I now sentence the accused to a Probation term of 3 years, subject to the conditions and terms spelt out to the accused as herein above.**

**DATED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF AUGUST, 2019.**

**LESIIT, J**

**JUDGE**