



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

CRIMINAL CASE NO. 10 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

LUCY NYOKABI MWAURA.....ACCUSED

CORAM: Justice R. Nyakundi

Mr. Meroka for the state

Ms. Rashid for the Accused

Accused present

JUDGEMENT

LUCY NYOKABI MWAURA who is the accused person in this trial was charged with the offence of murder contrary to section 203 as punishable under section 204 of the Penal Code. In the offence it is alleged that on 18/6/2017 at Matasia Trading Centre Kajiado North, the accused murdered Caroline Wanjiku. She pleaded not guilty to the offence. The prosecution summoned thirteen witnesses to establish beyond doubt that the accused committed the offence against the deceased.

Prosecution Case

According to the prosecution the scene of the murder was stated to be at Matasia Trading Centre. According to **Harrison Kihara (PW1)** who operates a butchery at the Centre on 18/6/2017. The deceased stopped by and left her personal bag in his premises. As he continued with serving the customers in the butchery he heard some screams soon after the deceased left her bag. Further PW1 stated that he went out of the butchery to check the source of the screams only to notice that the deceased was lying down on the ground. He therefore took the bag and reported the matter to Matasia Police station.

PW2 said that at about 4pm the accused left for her house which is not far away from the salon. In a short while PW2 said the accused back in the premises expecting that she had met the deceased (Carole) at the stair case of her house. As the conversation of the two progressed PW2 gave evidence that the accused daughter J came crying alleging that a lady in the house has made attempts to strangle her. When the accused left the salon PW2 heard screams. When she left to check the scene there were many people and a lady lying on the ground having suffered some injuries. The injured lady was rushed to the hospital as PW2 went back to her salon to attend to the customers. PW2 further told the court that while at her premises the accused came in accompanied with the police; and after a short inquiry she was left to go home. She said that later the police sought to record a statement about the incident.

At about same time PW3 Winnie Mokeira (PW3) who operates a Pharmacy at Matasia Trading Centre testified that on 18/6/2017 the daughter of the accused came to the shops crying. Further PW3 stated that the daughter when we refer as J informed them that there was a lady in the house who was beating and strangling her.

according to PW3 testimony he accused left the salon to go and establish why the alleged lady was beating her daughter. As the accused was trying to get back to the house PW3 said a lady holding a stone and stood next to the accused. Thereafter, PW3 fearing the worst left the scene with her child to shield her from any harm which might arise. Indeed, in a short while PW3 gave evidence that she heard that someone has been stabbed.

PW4 Mercyline Siriba testified that on the 18/6/2017 at 5.40pm while she was at a grocery shop the accused went there to purchase airtime. Further PW4 told the court that on topping up airtime the accused requested her to assist in giving out the mobile number of PC Mozeto of

Matasia Police station. She however failed to provide the mobile number to the accused because she did not seem to have it in her call log. After that inquiry PW4 went to her house to attend her child who needed change of diapers. On coming back to the shop PW4 stated that there were many people talking in hitched tones that a lady has been stabbed using a knife which came from her shop. She was later to be shown the knife by the police which she positively identified as one normally used to cut foodstuffs both in the house and grocery.

PW5 – Cosmas Kuria and PW10 Peter Ndungu testified as the good Samaritans who helped in escorting the deceased to Zam Zam Hospital. It was their testimony that on arrival the Medical personnel tried to resuscitate the deceased but tragically she was pronounced dead on arrival.

PW6 – Ibrahim Mwanza a brother to the deceased gave evidence on the identification of the body to the pathologist at the mortuary on 21/6/2017. **PW7 – Francis Ngugi** who at the material time was at Matasia shopping Centre purchasing airtime gave evidence that he saw a lady pass by in front of him wearing jeans trouser. What followed was a distress cry calling for help in Swahili language *“Hui, Hui niitie bwana wangu nimedungwa na kisu!”* in the evidence of PW7 she was also holding the left side of the back. There was a commotion of many people approaching the scene. Later PW7 saw a motor vehicle yield to the scene and carried away the victim to the hospital.

PW8 – PC Josephat Mugo trained Scenes of Crime Officer testified as the role he played in documenting the scene involving this incident of 18/6/2017. The set of photographs and certificate of photographic prints was produced as exhibit 2(a) (b) respectively.

PW9 PC Andrew Moseti of said that while at the police station on 18/6/2017 he received the accused person who had been brought there with a history of having assaulted one Carolyne Wanjiku. While acting on the report PW9 stated that he was made to understand that the victim had succumbed to death. Then on the same day he escorted the accused to Ngewa Police Station to be investigated for the crime of murder. On 20/6/2017 PW9 told the court that he proceeded to Matasia Centre in company of Sgt Sagara where they recovered the knife alleged used to inflict harm on the deceased.

PW11- Lawrence Kinyua as a Government analyst attached to the National Forensic Laboratory testified as to analyst report dated 17/4/2018. His evidence was based on the exhibits received from PC Dorris Ikhavi comprising of a knife, swab, blood swab of the deceased. Finger nails of the accused, blue skirt and white blouse also of the accused. In his forensic analysis PW11 concluded that the DNA profile generated from the swab matched that of the deceased. However, the DNA profile from the blood stained knife was non-responsive.

PW12 – Quinto Odeke testified as a data analyst attached to Safaricom Mobile Operator. PW12 who at the time had received instructions from the Investigating Officer analysed call data records for mobile telephone numbers 0727068781, 0728806896, 0718535515 covering the period 17/6/2017 to 19/6/2017. PW12 told the court that the information analysed revealed that both the accused and deceased on 18/6/2017 were within Matasia Trading Centre where the incident of murder took place. The analysed call data from the accused and deceased and location was produced as exhibit 8(b) and 8(c) respectively. In compliance with the Evidence Act a certificate dated 17/5/2018 was admitted in support of the analyses and source of the extracts of the call data.

PW13 – Dorris Ikavi the Investigating Officer working with the National Police Officer testified that she recorded statements from witnesses, ensure that the post mortem examination and the analyst report have been carried out to confirm certain aspects of the case. She therefore recorded that a charge of murder be preferred against the accused. The witness placed on record one pair of black/brown ladies' open shoes, post mortem form and mental examination form as exhibits.

The accused was placed on her defence. In her sworn statement she gave a history of her marriage with one David Njoroge of Matasia area. She said that at the time of alleged incident she heard screams while on duty at a salon where she was offering services to a customer. That is when she heard people referring to a lady called Carol. That is where she recalled instructions issued by her husband in respect to Carole that whether she is spotted a report be made to the police station. The accused explained that she reported to the police that the said Carole was at their home and armed. She denied killing the deceased.

Submissions by the Prosecution Counsel

The prosecution case was that the murder of the deceased was planned and executed by the accused with malice aforethought. Counsel for the state made a case on motive based on the compelling interest of both the accused and deceased which played out in their marriage with one David Njoroge. The Learned Principal Prosecution Counsel submitted that the state case was based on both direct and circumstantial evidence placing the accused at the scene. Further reference was made by the Prosecuting Counsel to the ingredients of the felony of murder having been proved beyond reasonable doubt.

Submissions by the Defence Counsel

In response, Ms. Rashid, counsel for the accused submitted and made a number of points. That according to the Prosecution case there was no evidence to satisfy the standard of proof known in Criminal Law that the accused participated in killing the deceased. She further argued and submitted that the deficiencies of the evidence regarding the assault remained scanty and incapable of entertaining the state a conviction for the offence of murder contrary to section 203 of the Penal Code. Learned Counsel submitted that in this case the knife alleged to be the murder weapon was not positively identified as one used to inflict fatal injuries complained of the deceased. That of significance and substantial importance was the admission of the government analyst that the knife did not reveal any DNA profile which is fundamental to the case.

The defence counsel adopting the language of the court in the cases of **GMI v Republic 2013 eKLR, Republic v Kipkering Arap Koskei & Another 16 EACA 135** submitted that the prosecution case did not go far enough to bring the charge within the formulation and test on circumstantial evidence. In a nutshell Learned Counsel contended that there would be no justification to enter a verdict of guilty and conviction against the accused person for the offence of murder.

Review and Determination

The charge of murder contrary to section 203 of the Penal Code is established when the trial turns out proving the following elements:

- (a) The death of a human being*
- (b) If it is then, proved that the killing of that other person was unlawful*
- (c) That in killing the deceased the accused had malice aforethought or intention to kill*
- (d) That the accused person has been positively identified and placed at the scene.*

We now turn to analyse the facts and evidence primarily as it relates to each singular ingredient to establish whether the burden of proof has been discharged beyond reasonable doubt.

(a) Death of the deceased

In the record, there is substantial direct and circumstantial evidence from PW6 – Ibrahim Mwanza a brother to the deceased who identified the body to the Pathologist confirming death. The post mortem report by Dr. Njeru who carried out the post mortem examination has predicated and on the facts of body before him which he concluded nature of injuries and cause of death. The Government analyst PW11 Dr. Kinyua received the swab and blood sample of the deceased for DNA analyses. His evidence established a link between the swab blood sample to match that of the deceased. The scenes of crime officer PC Mugo processed photographic parts of the deceased body marked and accompanied with the certificate of complaint admitted as exhibits 2(a) and 2 (b) in support of the death of Carolyne Wanjiku.

Accordingly, this element of crime has been proved by the post mortem to the required standard of beyond reasonable doubt.

(b) The element that the death of the deceased was through an unlawful act

This ingredient viewed from the provision of section 213 of the Penal Code the prosecutor has a duty to prove that the accused conduct or acts of omission or commission was the proximate cause of Carolyne's death. The issue of causation is relevant in all homicides cases as an important element connecting the injuries and the death of the deceased. Our jurisdiction checks as held in the case of **Guzambizi v Republic 1945 EACA** is that all homicides are considered unlawful unless excusable by law.

At the trial in support of causation the prosecution pointed to a knife used in this murder picked from a near premises of PW4. According to PW4 at around 5.40pm on 18/6/2017 the accused had visited her kiosk seeking to purchase airtime. As she went about her daily business it emerged that the deceased had been stabbed with a knife from her house.

Similarly, as regards the cause of death PW3 gave evidence that daughter J came to report to her mother the accused about an assault against her by a lady in their house. It was important for the accused to find out from the lady who later happened to be the deceased why she was assaulting the child. Further PW3 identified the deceased armed with a stone standing next to the accused. It is also important to note from PW3 testimony that as soon as she took flight from the scene there was pandemonium in the midst of all these that the deceased had been stabbed. PW7 Francis Ngugi evidence was to the effect that he happened to be within the vicinity of the murder on the fateful day. In particular, PW7 confirms recognizing the deceased screaming holding her left side of the back claiming that she has been stabbed. In pursuit by members of the public and PW7 was the accused whom they apprehended in connection with the assault.

Based on Dr. Njeru's post mortem report he deceased was found to have suffered a stab wound on right posterior chest wall measuring about 9cm long. According to Dr. Njeru's opinion the deceased died from exsanguination due to penetrating abdominal injury.

Analogizing the prosecution evidence with the accused testimony the deceased who was rushed to Zam Zam hospital did not manage to make it to the treatment room. There was no intervening act or third cause to exonerate the fact of the proximate cause of the death being the stab wound. In other words, it is from the injury inflicted which the deceased bled to death. Obviously, despite the immediate rush to the hospital the doctor was not able to render any immediate medical assistance to save the life of the deceased. It follows that the prosecution has proved beyond reasonable doubt that a felonious act by another human being produced the fatal result.

(c) whether the class of acts and materials comprised of malice aforethought.

In determining whether the accused person would be convicted of murder is dependent upon the prosecution proving through evidence rendered existence of malice aforethought. Section 206 of the Penal Code is the starting point in determining this ingredient in the inculcation of an accused person. The evidentiary circumstances on malice aforethought must bear no other reasonable expectation but facts proved ought to establish one or more of the following manifestation:

- (a) intention to cause death or grievous harm*
- (b) knowledge that the act or omission causing death will probably cause death or grievous harm*
- (c) an intent to commit a felony*
- (d) an intention by the act or omission to facilitate the flight or escape from custody of somebody who has committed or attempted to*

commit a felony.

Whether the prosecution relies on direct or circumstantial evidence to establish the fact of death. The question as to the offence being murder will be required to meet the threshold of malice aforethought. The burden of proof under section 107(1) of the Evidence Act rests with the prosecution to show that the external circumstances surrounding the commission of the offence was supported with a deliberate intent to kill another human being.

A series of cases are in accord with this provision stating that in order to establish malice aforethought the prosecution is required to prove:

(a) the nature and lethal weapon and how it was used to inflict the fatal injuries

(b) the part of the body targeted by the consequences of it in resulting to death was foreseen by the manner and sufficiency of evidence from the facts on the gravity of harm done to the victim. Thus in section 4 of the Penal Code grievous harm embodies injury which is life threatening or permanent harm that may be inferred from all of the circumstances that the accused intended the natural consequences of his action. Where therefore the accused deliberately intends to execute his intention to effect death or inflict grievous bodily harm upon the deceased. Malice aforethought is deemed to be irrefutably presumed. The evidence therefore rendered by the prosecution should not have any doubt that the specific intent to kill or perpetrate serious bodily harm ensued from the conduct of a person evincing depraved heart

A requisite elements of malice aforethought has been expounded upon interpretation of section 206 of the Penal Code in the following cases: **REX V Tubere S/O Ochen 1945 1Z EACA 63. Nebart Ekalfa v Republic 1994 eKLR. Ernest Asami Bwire Abanga alias Onyango v Republic CR. Appeal No. 32 of 1990 Karani and three others v Republic 1991 KLR 622 Morris Oluoch v Republic CR. Appeal No. 47 of 1996.** The gravamen of malice aforethought in the above cases is the intention on the part of the accused to kill the deceased may be predicted or executed on the spur of the moment.

Section 206 of the Penal Code is very clear that malice aforethought must manifest itself for the court to conclude that the accused killed the deceased in circumstances which connote murder contrary to section 203 of the Penal Code. Therefore, in light of the above interpretation had the prosecution discharged the burden of proof in this case?

As indicated by the testimony of PW1, the deceased arrived at Matasia Trading Centre leaving her bag in his premises. It did not take long or about twenty (20) minutes he heard screams only to learn that she had been stabbed and did suffer bodily harm.

Similarly, PW2 confirms that on the fateful day after church he opened her salon business but in the course called for assistance of the accused to help in hair dressing the customers. It did not take long as explained by PW2, the accused stepped out for a short period to go to her house. PW2 further saw the accused daughter in a distressed condition. What followed thereafter were screams from a lady lying on the ground who apparently had been assaulted.

In the meantime, PW3 saw the deceased holding a stone while facing the accused. In observing the events and fearing for her safety PW3 stated that she took flight from the scene. She was only to hear that the lady who was holding a stone has been stabbed. PW4 in the meantime confirms that the accused came by her kiosk precisely from the chain of events it was after the incident. According to PW4 the accused required a mobile number of a police officer and top up credit. As all these requests were being processed by PW4 she noticed members of the public talking about the murder. Just at that moment her name featured that the murder knife was from her house. Francis Ngugi PW7 in his evidence among others told the court that while at Matasia stage he became one of the persons who pursued the accused and effected arrest. The post-mortem report showed that a stab wound on right posterior of chest wall. The injuries inflicted caused the death of the deceased.

The accused in her sworn testimony vehemently denies inflicting harm or causing the death of the deceased. All these pegs the question whether the prosecution has proved malice aforethought. It can be said that upon taking a maximum evaluation of the evidence there is no dispute that the accused and deceased had a confrontation. This can be confirmed from the testimony of PW1 where the deceased initially left her bag. PW1 heard the screams after twenty minutes of the deceased leaving the butchery. Besides PW1 there is the testimony of PW2 who confirms that the accused left the salon for the house where presumably the deceased had gone visiting. It is circumstances of this case the deceased used to have a relationship with the husband of the accused. In fact, the child of the deceased continues to live with his father in the house where she went visiting on 18/6/2017. The fact that PW3 saw the deceased holding a stone in close proximity to the accused is a manifestation that all systems were set for an altercation between the two of them. That the essence is also confirmed by PW3 who heard screams soon after leaving the scene.

In the foregoing, there is strong evidence linking the accused with the killing of the deceased. I am guided by the principles on circumstantial evidence in the case of **Republic v Kipkeling Arap Koskei & Another 16 EACA 135 and Musoke v Republic 1958 EA 715.**

The testimony of PW2, PW3, PW4 and PW7 who were within the scene presented consistent and credible evidence which squarely places the accused at the scene. Although, they did not see the actual stabbing, it is imperative to note that before PW3 left the scene she saw the deceased in a fighting mode facing the accused. It is also necessary to draw the inference that from the time PW1 saw the deceased alive to the time when it was reported that she has been stabbed is only a span of about 30 minutes or so. The salient features which we discern from the evidence are that the moment accused daughter came crying, the stabbing had taken place. The accused had already left the salon for her house. The deceased had come to this very house accompanied by the accused and her family. The arrest of the accused was not that of a bystander but one which facts proven point out to her culpability in the commission of the murder.

I am of the considered view that there are no co-existing circumstances which weaken the inference that there was death. That the death was unlawfully caused. That the cause of death was due to exsanguination due to penetrating abdominal injury. That the prosecution has succeeded in proving the unlawful death of the deceased beyond reasonable doubt. What has remained distinguishing to establish that the accused had the necessary intention to cause death or grievous harm to the deceased.

It is my considered opinion that besides the recovery of the knife albeit its recovery there was need to set out at what time accused picked it from PW4's kiosk. I also take into account the evidence of PW3 who saw the deceased in possession of a stone with the accused standing not far away. Assuming the accused was armed with a knife at that moment PW3 never made any reference to that fact what the circumstantial evidence clearly sets out is the infliction of a stab wound by use of a knife positively identified to be from PW4 house. The evidence also entails that the accused was physically seen in PW4 premises and soon thereafter the members of the public were seen gathered in so far this incident was concerned. Although it is now clear that the prosecution established the element of death and act being unlawful. I am in doubt as to point of malice aforethought.

In my view there is proof of manslaughter carried out by the accused. Manslaughter is prescribed under section 202 of the Penal Code as follows: **"Any unlawful act or omission which causes death of another person."** Manslaughter as stated in the court of appeal case of **Patrick K. v Republic 2015 eKLR** lacks the element of malice aforethought; putting all factual findings are that the prosecution has discharged the burden of proof for the offence of manslaughter. I found the accused defence incapable of pinning the prosecution case in a manner that raises doubt that this offence did not take place in the manner explained by the witnesses.

This fatal harm could not have occurred in any other way than that of the accused's conduct. But even if this court had somehow to uphold the accused version the factual findings of her leaving the salon for the house, the altercation with the deceased as seen by (PW3). Her conduct after the incident seeking police assistance (PW4) must at least at the very minimum left many questions unanswered to exonerate herself from the act of killing of the deceased.

In our law of two people fight one another and one of them in the course of further struggle arms himself or herself and turns to kill the assailant and in doing so applies excessive force, the homicide is not excusable. The only factor which the court must take into account in deciding whether the offence falls within the per view of section 203 or section 202 of the Penal Code is whether it was necessary to use force and whether the force used was reasonable. But in this case there is nothing indicating that the accused had suffered any defensive injuries from the deceased what is understandable from the evidence of PW3 is the fact that the accused was under threat of attack from the deceased. How the dramatic events escalated into a false fight reveals significantly scantily from the side of the prosecution case.

For the above reasons I find the accused person guilty of manslaughter contrary to section 202 and do convict her of the offence as punishable under section 205 of the Penal Code.

Sentence

This is a ruling in respect a sentence for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code following the conviction of the accused after a full hearing was conducted. The Accused was initially charged with murder contrary to section of 203 as read with 204 of the Penal Code which was reduced to a lesser charge of manslaughter after having considered the totality of the evidence tendered by both the prosecution and the defence, the submissions and exhibits in support of their respective cases.

Upon conviction and in order to assist the Court in reaching an appropriate sentence, the Court called for mitigation from the offender, the Pre-sentence Report, Probation Department in accordance with section 137I of the CPC. The said section provides as follows:

"137I. Address by parties

(1) Upon conviction, the court may invite the parties to address it on the issue of sentencing in accordance with section 216.

(2) In passing a sentence, the court shall take into account—

(a) the period during which the accused person has been in custody;

(b) a victim impact statement, if any, made in accordance with section 329C;

(c) the stage in the proceedings at which the accused person indicated his intention to enter into a plea agreement and the circumstances in which this indication was given;

(d) the nature and amount of any restitution or compensation agreed to be made by the accused person.

(3) Where necessary and desirable, the court may in passing a sentence, take into account a probation officer's report."

In **Republic v. Philip Muthiani Kathiwa, Machakos High Court Criminal Case No. 14 of 2015**, the Court considered the issue of appropriate sentence in a case of manslaughter upon a plea of guilty and said:

"The Principles

3. The objects of a sentence is, primarily, to punish for an offence and to reform the accused in such manner as to, as appropriate in the circumstances of the case, deter the repetition of the offence by the accused and others taking into account the moral blameworthiness of the accused, the prevalence of the crime and the situation of the accused himself.

4. Section 17 of the Penal Code provides that criminal responsibility for the use of force in the defence of person or property shall be determined in accordance with principles of English Common Law. The question in every case is whether the force used by the accused in self-defence is, in the circumstances of the case, excessive. See **Mokua v. R (1976-1980) KLR 1337**. The accused

herein acted on self-defence when he tried to defend himself and others who the deceased while drunk had attacked by with a panga. The use of the poisoned arrow on the deceased, in the circumstances if this case, was excessive force, and the accused was guilty of Manslaughter.

5. In considering the appropriate sentence, same offences should attract similar consistent penalties. In *Andrew v. R* (1976-1980) KLR 1688, in a case where the appellant and his co-accused had in a fight started by them the deceased was stabbed, the Court of Appeal found manifestly excessive and reduced a sentence of imprisonment for 11 ½ years to imprisonment for a term of 5 years. In **Orwochi v. R(1976-1980) KLR 1638**, the Court of Appeal reduced as manifestly excessive the sentence of 4 years imprisonment for an appellant who, in circumstances similar to this case, had in self-defence during an ensuing struggle stabbed the deceased using the panga by which the deceased had attacked him, to such sentence as ensured the immediate release of eh appellant a young man aged 25 who had been in custody for 15 months before the sentence in the trial court and six months before appeal was heard and determined.

6. The decision of the Court of Appeal in **Muoki v. R (1985) KLR 323 (Madan, Kneller JJA. & Platt, Ag. JA)** is relevant. The Court approved a sentence of 3 ½ years for manslaughter as not being manifestly excessive as to warrant interference by the Court of Appeal and also approved the practice, then, of courts taking into account the period that the accused had been in remand in considering what term of imprisonment to impose. The practice of accounting for time spent in custody was given statutory backing in the 2007 amendment to section 333 (2) of the Criminal Procedure Code (Act No. 7 of 2007) which inserted a proviso that

“Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

This ruling is to consider the appropriate and just sentence that is proportional to the mitigating and aggravating circumstances of this case as well as the principles and purposes of sentence. The facts of the case reveal that the death of the deceased was as a result of stabbing by the offender which caused her to suffer grievous bodily harm and later passed on while on the way to the hospital. The facts also speak to the existence of an altercation between the offender and the deceased. According to PW2, she saw the offender’s daughter in a distressed state and thereafter she heard some screams from the deceased who was lying on the ground who apparently had been assaulted.

In the meantime, PW3 observed that holding a stone while facing the accused after which she fled from the scene fearing for her safety. She later learnt that the lady who was holding a stone had been stabbed. This court after maximum evaluation of the circumstances of the case found that the prosecution case is bereft of malice aforethought to suffice a murder conviction. There is no dispute that the accused and deceased had a confrontation which culminated into the deceased’s misfortune.

As regards sentencing, the Sentencing Policy Guidelines, 2016 (“the Guidelines”) published by the Kenya Judiciary, require that the sentence imposed must meet the following objectives in totality;

- a) *Retribution: To punish the offender for his/her criminal conduct in a just manner.*
- b) *Deterrence: To deter the offender from committing a similar offence subsequently as well as discourage other people from committing similar offences.*
- c) *Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.*
- d) *Restorative justice: To address the needs arising from criminal conduct such as loss and damages.*
- e) *Community protection: To protect the community by incapacitating the offender.*
- f) *Denunciation: To communicates the community’s condemnation of the criminal conduct.*

I have considered the offender’s mitigation filed on the 7th of August 13, 2019 that she is a young person of 31 years and that she is a first offender. It is also indicated that she has no history of violence and that she had no motive to harm the deceased. Further that the offender has a minor child that needs a care, her mother is elderly, ailing and she relies on the offender to cater for her child. It is also indicated that the young man that the offender was cohabiting with took off leaving the offender as the only parent to the children. That the offender has dutifully attended court whenever she was required to attend and has abided with all court’s conditions as regards bond. The Counsel for the accused therefore prays for a non-custodial sentence and that she be placed on probation or alternatively she be released unconditionally.

I have also considered the probation officer’s report filed on the 3rd of July 2019 in respect of the offender’s case. In terms of the conduct or character of the offender, it is indicated that the offender seemed humble and cooperated in giving them the required information. She showed that she is remorseful as she is highly affected and distraught by the circumstances that she finds herself in. She therefore pleads for leniency from the honourable court.

The court took into account the fact that victim’s mother objects a non-custodial sentence stating that she wants justice for her daughter. The accused’s family have made efforts towards reconciliation of the two families which would bring closure to the mother of the deceased who is most affected by the death of her daughter. The area chief says that the offender is of good character and that what happened was just an unfortunate incident. She also pleads with the court for leniency on behalf of the offender.

It is noteworthy that when passing a sentence, the court must look at the objective to be achieved. Whether deterrence, public protection or reformation is the objective, courts must first of all have regard to the nature and circumstances of the offence, the offender, the victim and the public interest. In simple terms, courts look at the aggravating and the mitigating factors of the offence as well of the offender. The

sentencing court must therefore weigh the two and come to an informed conclusion as to the type of sentence to impose.

Having considered the above aggravating and mitigating factors, the law on sentencing, the purposes and principles of sentencing as well as case law, this court finds that the aggravating factor of causing the deceased death by stabbing outweighs the accused's somewhat strong mitigation. Consequently, this warrants a custodial sentence. In the premises, the offender is to serve 10 years' imprisonment.

Dated, delivered and signed in open court at Kajiado this 13th August, 2019.

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R. NYAKUNDI

JUDGE