



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KABARNET

HCCR.C. NO. 2 OF 2018

REPUBLIC.....PROSECUTOR

- VERSUS -

NICHOLAS YATOR.....ACCUSED

JUDGMENT

1. On the basis offered by the DPP and approved by the court that the killing of the deceased by her accused son was not premeditated, court accepted the plea bargain by which the murder charge herein was reduced to a charge of manslaughter contrary to section 202 as read with 205 of the Penal Code. The Court then examined the accused on Oath and noted his certificate of fitness to plead, to ascertain the voluntariness of the plea bargain agreement on the part of the accused before accepting the plea bargain agreement and the new charge.

2. When the new charge of manslaughter was read and explained to him, the accused pleaded guilty and the following facts of the case were presented by the DPP:

“FACTS

7. The deceased and the accused in this matter are mother and son. On the 26th day of December 2017 at about 5:00pm, the accused herein was on his way from a drinking spree when he passed near his brother’s home where there was a function. He saw a lady by the name Jesicah Komen who he claimed was misleading his wife. He confronted her and a fight ensued between the two. The said lady raised alarm and several people from the function ran to the scene including the deceased, mother to the accused person.

Members of public managed to separate the two and the accused went away. At a distance, the accused then picked a stone and threw it aimlessly to where there were many people and unfortunately the stone hit the deceased on the chest and she fell down. Members of the public tried to resuscitate her to no avail. They took her to Kiptagich Health Centre where she was pronounced dead on arrival. The accused was arrested at the scene and rearrested by police from Kabarnet Police Station.

The body of the deceased was taken to Baringo County Referral Hospital where post-mortem was done and the cause of death was found to be acute chest injury (Haemopericadium/raptured heart) following blunt force trauma. The accused was arraigned in court and charged with murder which has now been reduced to manslaughter. He was there after presented before the doctor at Moi Teaching & Referral Hospital for mental assessment and was confirmed to be mentally fit to stand trial.”

Conviction

3. The accused admitted the facts set out above and the Court accepted his plea of guilty and convicted him for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code, on 27/3/2019.

Sentencing Proceedings

4. The Ass. DPP intimated to the Court that she did not have previous records of the accused.

5. The accused’s Counsel, Mr. Kipnyekwei, made submissions in mitigation as follows:

“Mr Kipnyekwei in mitigation

As the court has heard, the accused was from a drinking spree and he was drunk at the time of the incident. The accused became agitated when he saw one Jessica was trying to mislead his wife into taking alcohol. In the state of confrontation, he picked a stone and he threw it in a general direction where the people were coming from. He did not intend to hit any particular person. It was purely accidental and he said he was confused.

He did not realize that he had hit anyone until several hours later after he sobered up. He says he was not in control of his faculties and in retrospect he regrets the incident. The accused is remorseful for he did not know what he was doing. The victim is his own mother with whom he had no grudge at all.

He did not intend to take the life of his mother and he says that he is also grieving and regrets the loss of his mother whom he loved unreservedly. For that reason, the accused is praying for leniency. He is 32 years married with 3 minor children between 10, 8, 6 years. The wife of the accused is unemployed and he is the only bread winner. A custodial sentence will deprive the young family the person who fends for them.

Accused is a first offender. We pray for a non-custodial sentence in order to allow the young family enjoys benefits of a father figure and that he continues to support his family. The accused has already felt the pain of the loss of his mother and custodial sentence will equal the pain he has felt. While in custody he has reformed and in a born again Christian and he has abandoned the bad habit of drinking and prays for a chance to continue reforming and being a positive member of the society. We pray that the court considers a non-custodial sentence.”

6. The Court then called for pre- sentence Report for the Probation Officer and set the matter for further consideration on 25/4/19, and the Probation Officer’s Report was filed, recommending that the accused was not suited to non-custodial sentence as follows:

“CONCLUSION

Your lordship, before the court is a 32 year old offender with a history of violence against his family members and immediate neighbours. Prior the commission of the present offence, he has been a subject of ADR mechanism for some time but he has been unable to restrain himself from anti-social conduct. His family members comprising of the siblings and the father are still bitter over the loss and **are opposed to his release into the community at the moment. The local administration equally replicated similar sentiments indicating that the accused is a person who is beyond control of his immediate family and neighbors. They feel that he should be away for sometime as a means of rehabilitating him.**

Recommendation

In view of the negative sentiments expressed by his family members and the local community, the accused is not eligible for a community based sentence. His case may be dealt with otherwise.

KIPRONO M.K

PROBATION OFFICER

FOR: Baringo Central Sub-County.

DATE: 25/4/19”

Sentence determination

7. The court notes the obvious want of intention to kill the deceased or any other person. In throwing the stone, that hit and fatally injured his mother, the accused who was drunk at the time did not intend to kill any person that the stone might have hit but was rather trying to ward off the public who sought to separate the accused and the lady he was fighting with.

8. In a recent case, ***R v. Samson Kalamai Lebene***, KBT HCCR Case NO 2 of 2017, this court sentenced a husband who killed his wife following a domestic quarrel to imprisonment for five (5) years and held:

“I consider that the sentence of imprisonment for five (5) years will meet the justice of the case for retribution and deterrence of the accused and assuagement of the deceased’s family....”

9. I think that, here too, a sentence of imprisonment for five (5) years fits the circumstances of the case where the accused in his drunken state must truly be said not to have intended the killing of his mother by his act of throwing a stone at the members of the Public who had confronted him; where the accused himself has to suffer the pain of killing his own mother by his hand and where he will suffer, together with the members of his family, who, understandably, now “***are opposed to his release into the community at the moment***”, for rest of his life the loss of his mother; and also considering his youthful age of 32 years.

Orders

10. Accordingly, for the reasons set out above, having convicted the accused on his own plea of guilty for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code, the court sentences the offender to **imprisonment for five (5) years to be reckoned from 15th January 2018 when he was remanded awaiting his trial**, pursuant to section 333(2) Proviso of the Criminal

Procedure Code.

11. Right of Appeal under section 379 of the Criminal Procedure Code explained.

Order accordingly.

DATED AND DELIVERED THIS 30TH DAY OF SEPTEMBER 2019

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Kipnyekwei, Advocate for the Accused.

Ms. Macharia, Ass. DPP for the State.