



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 6 OF 2017**

**REPUBLIC..... PROSECUTOR**

**VERSUS**

**A N M.....ACCUSED**

**SENTENCE**

1. A N M (“A”) is sixteen years old. Despite her tender age, she has a child – a daughter who is slightly more than one year old.
2. A was presented to me first on 30/01/2017 charged with the offence of murder contrary to section 203 as read together with section 204 of the Penal Code. She was accused of unlawfully killing H W N on 22/01/2017 in the Kiandutu slums in Thika Sub-County within Kiambu district.
3. Something seemed amiss from the time of arraignment. It was immediately obvious to me that Ann was a minor; yet she was clutching an infant in her arms. A’s mother sat towards the last rows of the Court silently crying. I summoned a Children’s Officer to interview A after a lawyer was assigned to her and before I took plea.
4. It turned out later that the victim of the alleged homicide was A’s husband. It is not clear how old he was but he was clearly an adult.
5. I directed that A be placed at the Kiambu Remand Home for children as I awaited formal age assessment and further processing. Unfortunately, this case has taken much longer to conclude than it should have given the sordid details that emerged during the plea agreement.
6. To her credit, after reviewing the file, Ms. Maari informed the Court from the beginning that she was seeking instructions from her superiors on whether to withdraw the charges or conclude a plea agreement with the Accused Person. In any event, the parties concluded a plea agreement and by a Plea Agreement dated 08/02/2018, the Accused Person pleaded guilty to the charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code. After due caution, and after satisfying myself that the Plea Agreement was entered into knowingly and voluntarily, I recorded a conviction and called for pre-sentencing report and victim impact statements (if desired) and set the case for a sentencing hearing. The victim’s family elected not to participate in the case
7. The agreed facts of the case lay out the circumstances and context in which the offence was committed. They are as follows:

*The facts of this case are that, on the 22nd day of January 2017 at around 10.00am, the deceased had a quarrel with his wife A N M who is the accused herein and when the deceased became violent the accused took her baby and left to her mother’s house within Kiandutu estate. Later, at around 9:30p.m the deceased while drunk followed the accused to her mother’s home and started demanding that the accused should go back with him to their house but the accused’s mother advised the deceased to go back and return the following day when he was sober for them to discuss and resolve whatever problems they had before she could release them together and the deceased obliged.*

*The deceased again went back to the mother-in law’s house at around 10.30p.m (hardly after one and half hours) while drunk and started demanding for the house to be opened so that he could take his child. At that point the accused’s mother again requested him to go and come back in the morning but the deceased could not take any of his mother in laws pleas. He instead climbed the fence and dropped into the mother in-law’s compound and while there he broke the door to the house and started beating the accused and her mother while trying to take the baby by force. The deceased picked a kitchen knife and he threatened to kill the accused or her baby if he was not given the baby. The deceased attempted to stab the accused but he was disarmed but he did not leave it*

*their but instead he ran to the kitchen and picked another knife. The deceased attempted to stab the accused and her baby, and while defending herself, the accused and the deceased struggled for the knife.*

*During that commotion the deceased was accidentally stabbed on his ribs. The deceased was rushed to Thika Level Five hospital*

where he was denied admission. He later received first aid at Dr. Wachira's health center and was later referred to St. Mulumba's hospital where he later succumbed to the injury.

The accused was arrested and charged for the offence of murder.

8. The Prosecutor, Mr. Kinyanjui requested the Court to consider non-custodial sentence and informed the Court that the Accused Person is a first offender.

9. Mr. Wakaba appeared for the Accused Person and reminded the Court that the Accused was a minor and was merely sixteen at the time the offence was committed. He asked the Court to consider the circumstances of the case especially as laid out in the Pre-Sentence Report. Lastly, he asked the Court to consider that A had a child who was barely two years old and needed her help. The grandmother has been incapacitated by the sexual assault she suffered as part of the transaction that led to the present charges.

10. It would be unfair to A and her mother to sugar-coat the events of 22/01/2017. A is a minor. She deserved care and protection. Due to the poverty and the social and economic circumstances she found herself in the slums of Kiandutu, she was not only forced into an early marriage but conceived and gave birth before she was sixteen years old. As nature would have it, she got married to a violent man also. On the 22/01/2017, the facts show, even after retreating to her mother's house after a quarrel with her husband, the husband followed her there with a band of his allies. He not only violently broke the door and entered the house armed with a knife and threatened to kill either the child or A, his band of allies prevented A's mother from smuggling the child out of the house into safety. It emerged later that the victim's allies cornered A's mother and violently raped her. They later stole all the items in their house and disappeared.

11. This probably as lugubrious a sentence narrative as a judge can face. I have found no aggravating circumstances in the case. There are many extenuating circumstances. I must also begin with the clear position that A is a child and I must be guided by the provisions of section 191 of the Children's Act in fashioning appropriate sentence. Custodial sentence should be the last resort. In this case, I have found no single reason to even consider custodial sentence.

12. There is one factor I have to deal with, though. A has clearly gone through much trauma. The Probation Report states that she may have anger management issues she has to deal with. It is also important that she goes through counselling. Finally, it is probably a good idea to remove her from the social milieu that produced her circumstances. It is in this regard that I fully agree with the recommendation of the Probation Officer that A should be sentenced to an institutionalized Probation sentence at Siaya Probation Hostel for intensive counselling on trauma and anger management. While there, she will also learn about life skills and vocational training.

13. Given the age of her child, I sentence her to six months of institutionalized Probation Sentence so that she can rejoin her daughter as quickly as possible to restart life.

14. Orders accordingly.

**Delivered at Kiambu this 9<sup>th</sup> day of February, 2018.**

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**JOEL NGUGI**

**JUDGE**