



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**CRIMINAL CASE NO. 47 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**NAOMI WAMAITHA NJERI.....ACCUSED**

**SENTENCE**

1. The convict **NAOMI WAMAITHA NJERI** was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** the particulars of which were that on 26<sup>th</sup> day of March, 2013 at Karoha village within Kiambu County murdered **PENINAH WANJIRU MWANGI**.

2. She pleaded not guilty to the said charge before Muchemi J and after several false starts her trial commenced before me on 24/2/2016. After hearing the testimony of four (4) prosecution witnesses on 21/11/2017 the prosecution and the defence entered into a Plea Bargain Agreement which was accepted by the court wherein the charges were reduced to manslaughter to which the accused pleaded guilty and was convicted on her own plea of guilty.

3. The brief facts leading to the commission of the offence herein were that the accused while working as a house help in Buruburu Estate within Nairobi County having dropped out of school after class eight (8) met one JMK who was then working as an handcart pusher whom she lived with as husband and wife through which they had two (2) children. They lived together for three (3) years before parting ways as a result of domestic violence, abuse and neglect the accused leaving behind the two children with their father and went to work at Eastleigh where she once again met one P.K. a matatu driver who moved with her to Kiambu County but without telling him that she had two children from previous marriage.

4. In the meantime the convict's former husband neglected the said children who ended up in the street before being rescued by the sister of the accused who together with her brother agreed to take care of the children while they sought the whereabouts of the accused whom they managed to trace on the 24<sup>th</sup> day of March, 2014 and handed over the said children. Since she had not informed her new husband of the fact that she had children, the same rejected them and demanded that they leave his house and the attempt by the accused to get a placement for the children hit a solid rock.

5. In desperation she thought of ending her life together with her children who had now become a challenge to her new found love leading her to serve them with tea mixed with organophosphorous pesticide which is poisonous and harmful to human leading to the death of the deceased and hospitalization of her brother who is currently admitted to a children's home.

6. In mitigation the accused stated that she was remorseful for her action. She stated that she was brought up by a single mother and therefore lacked a father figure and that at the time of the commission of the offence she was alone and lacked social support since those close to her could not help her out to enable her organize her life in the face of rejection by her new husband.

7. The state submitted that though she was a first offender, she should be given custodial sentence so as to benefit from the programs within prison establishment before she is released to society and that the sentence meted out should act as a lesson to other would be offenders.

8. In compliance with the Sentencing Policy Objectives which requires that both the offender and the victim should participate in and inform the sentencing process. The court ordered for a Presenting Report in which it was stated that the family members of the accused believed that her to stay at Lang'ata Women Prisons had been of some lesson to her and with proper counseling would be rehabilitated. It was stated that the accused had been in custody for the last four (4) years and regrets her acts which happened after being pushed to the wall with no option but to take her life and that of her children. It was therefore recommended that the accused be placed on probation during which period she will undergo intensive counseling sessions on anger management and training on parenting and life skills that will grant her proper decision making skills.

9. The objectives of sentencing as per the **Sentencing Policy Guidelines No. 4.1** are as follows:-

- 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 to discourage other people from committing similar offences.**
- c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law abiding person.**
- d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.**
- e. Community protection: to protect the community by incapacitating the offender.**
- f. Denunciation: to communicate the community's condemnation of the criminal conduct.**

10. In deciding whether to impose custodial or non-custodial sentence the following factors must be considered by the court:-

- a. Gravity of the offence.**
- b. Criminal history of the offender**
- c. Children in conflict with the law.**

11. In this matter the convict was charged with causing death of her own child when confronted with rejection. Her intention then was to achieve a short cut objective of sorting herself out of her immediate situation. As a result of her action her life will never be the same again. She therefore needs to be rehabilitated so as to be useful member of the society and any sentence meted out must be one that will achieve that objection.

12. I have taken into account the fact that the accused has been in remand custody for a period of five (5) years and I have further taken into account the fact that our prisons now have rehabilitation and reform programs which only benefits convicts and not remandees and therefore taken the view that the convict has not benefited from the said projects.

13. Having arrived to the conclusion that rehabilitation is the best sentence to the convict herein, I am of the considered view that sentence of eight (8) years to be served as follows will be the most appropriate sentence herein:-

- a. Five (5) years imprisonment from 10/4/2013 when the accused person first appears in court.**
- b. Three (3) years thereafter on probation to continue with rehabilitation programs, and it is so ordered.**

14. The convict has a right of appeal on the sentence only having been convicted on her own plea of guilty as a result of a Plea Bargain Agreement.

**DATED, DELIVERED and SIGNED at Nairobi this 12<sup>th</sup> day of April, 2018.**

.....

**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

*Mr. Meroka for the State*

*Mr. Wachira for the Accused*

*Accused persons present*

*Court assistant Paul*