

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 46 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

ESTHER TACLALEM ADAPALI.....ACCUSED

RULING ON SENTENCE

1. The Accused Person herein is Esther Taclalem Adapali (“Accused Person”). She agreed to plead guilty to the lesser offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code, Chapter 63, Laws of Kenya *vide* a Plea Agreement dated 31/05/2018. The Accused Person had originally been charged with the murder of Joseph Nyachoboli on 12/11/2017. She denied that charge prompting the plea bargaining negotiations that produced the recorded Plea Agreement.

2. The agreed facts as contained in the Plea Agreement are as follows:

On the 12th November [2017] at around 5:pm, at Athinai Rongai Sub-County, the Accused was in the house carrying out her household duties when the Deceased came home drunk and when the Accused asked him for money to take their child to hospital, a confrontation ensued. The Deceased turned violent and shouted to the Accused that she should not ask for money as he did not have any. The Deceased started a fight and took a knife wanting to stab the Accused but the knife fell down. The Deceased tried to pick the knife [up] but the Accused grabbed it and stabbed the Deceased once on the chest. When the Accused saw that the Deceased had died, she started screaming which attracted neighbours to come to the scene. [A]fter the incident, THE Accused surrendered to Mogotio Police Station and thereafter [was] arrested. The Police visited the scene and took the body to Nakuru County Public Mortuary.

3. After I duly satisfied myself that the Plea Agreement was knowingly and voluntarily entered, I recorded the guilty plea to the offence of manslaughter and schedule a sentence hearing. During the Sentence hearing, Mr. Motende that the Accused Person is a first offender and that the State was happy to go with the recommendations of the victim’s family.

4. The victim’s family were uniformly in favour of a non-custodial sentence. The Deceased’s mother, Ms. Ann Akai and the victim’s uncle, Samuel Etyngong, addressed me on the appropriate sentence. They were clear that they considered what happened a tragic accident; and that they badly needed the Accused Person home to take care of the three children. The children need their mother – now that their father is dead, they pleaded with the Court.

5. The filed Probation Report was in the same vein. In all material senses, the Report is favourable to the Accused Person and unreservedly recommends a probationary sentence.

8. Mr. Ngotho, the Defence Counsel, addressed the Court on behalf of the Accused Person. He told the Court that the Accused Person is remorseful; and that looking at the evidence, it is clear that she was in a fight for her life when she stabbed her late husband. He asked the Court to consider that the Accused Person is a first offender; is a young mother; has been forgiven by the victim’s family; and did not commit the offence in a violent way.

7. From the circumstances of this case, I would agree that a non-custodial sentence is appropriate. There are many factors which militate in favour of a non-custodial sentence. I have noted that the Accused Person had demonstrated genuine remorse. She is a first offender. The offence she has pleaded to did not involve any intricate planning, premeditation, or depraved form of violence. Indeed, the agreed facts show that the Deceased attacked the Accused Person first – and had the Accused Person not gotten the knife after it fell she might have been the victim of murder. Lastly, the Accused Person is of relative youth at only twenty five years of age. She has a whole life ahead of her. Nothing useful will come out of incarcerating her in prison for any period of time beyond the time she has been in custody. She will be far more useful bringing up her three children under the supervision of a Probation Officer.

8. In the circumstances, I sentence the Accused Person to serve a Probation Sentence for a period of two years under the supervision and direction of the Probation Officer in her Sub-County.

9. Orders accordingly.

Delivered at Nakuru this 28th Day of June, 2018.

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JOEL NGUGI

JUDGE