



REPUBLIC OF KENYA

HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 32 OF 2018

LESIT, J

REPUBLIC.....PROSECUTION

VERSUS

ELIZABETH AUMA ONYANGO.....ACCUSED

RULING ON SENTENCE

1. The accused **ELIZABETH AUMA ONYANGO** was first arraigned before the High Court charged with the one count of murder contrary to **section 203** as read with **section 204** of the **Penal Code** where she pleaded not guilty. Through a Plea Bargaining agreement entered on 24th September 2018, the parties agreed to substitute the charge against the accused person to manslaughter contrary to **section 202** of the **Penal Code**.
2. The Court convicted the accused on her own plea of guilty to the offence of Manslaughter on a charge prepared following the acceptance by the Court of the plea agreement pursuant to **section 137(H)** of the **Criminal Procedure Code (CPC)**, upon being satisfied of the factual basis of the plea agreement and that the accused was at the time of the agreement competent, of sound mind and had acted voluntarily in terms of **section 137 (G) of the CPC**.
3. I have taken into consideration the fact that the accused has pleaded guilty to a lesser charge thus saving the courts precious time.
4. Mrs. Kinoti, the Learned Prosecution Counsel has treated the accused as a first offender. She urged that the prosecution has not been provided with any records from the DCI on the accused previous record. I therefore treat the accused as a first offender.
5. Mr. Apolo for the accused in mitigation urged the court to consider that the accused is a single parent with two minors aged 7 years and 4 years respectively and she is the sole breadwinner. The accused was also taking care of her aged mother who was fully dependent on her.
6. Mr. Apolo further submits that the accused is remorseful and regrets action she took leading to the death of the deceased. The accused had no intention of committing the offence. It is regrettable her actions led to the death of the deceased.
7. The Learned Defence counsel informed the court that the accused is a very young citizen 25 years old and at the time of the offence she was working to provide for her family. He urged that the accused prays for leniency to enable her guide and take care of her two minors who are fully dependent on her.
8. In closing the defence submissions, the counsel urged the court that the accused has not wasted the courts time. She entered into a Plea Bargain agreement so as to conclude the matter within reasonable time. He urged the court to grant accused person a non-custodial sentence.
9. The court has considered that the accused person has been in custody for three (3) months since her arraignment in court in June this year.
10. I have considered mitigation by the defence and other factors before the court.
11. I have considered the circumstances of the offence. The accused and the deceased quarreled and a fight ensued between the two. The accused picked a knife from the hotel dishes and stabbed the deceased on the left side of the chest.
12. I have considered the manner in which the deceased met her death. The post-mortem report which was conducted at the City Mortuary indicated that the deceased's cause of death was exsanguination due to severe chest injuries due to a single stab wound.

13. The circumstances are that there was a quarrel and a fight before the deceased was stabbed. By stabbing the deceased on the chest, the accused knew that a serious injury would be caused to the deceased who herself was not armed.

14. I took into consideration that the accused pleaded guilty to the offence on the face of it and that shows remorsefulness on her part.

15. *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 blame-worthiness of the accused, the prevalence of the crime and the situation of the accused himself.*

16. In **Gerald Ndoho Munjuga vs. Republic (2016) eKLR** the High Court sitting in Appeal quoted with approval the Supreme of India in the **State M.P. vs. Bablu Natt** where the court held:

“Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no straightjacket formula for sentencing an accused on proof of crime. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances”.

17. *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-defense 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.*

18. Having considered the facts of this case as set out above, it appears to me, that although the accused killed the deceased following a quarrel and ensuing fight, the accused had used excessive force in her attempt to ward off or subdue the deceased, if it is assumed that the deceased was the aggressor when the fight broke out. The accused is the one who reached out for a knife from the hotel dishes. There was no evidence that the deceased was armed with anything more to attack the accused. It appears to me that the accused picking a knife which she subsequently used to stab the deceased was unwarranted and in view of the threat that she wished to counter.

19. Having taken into consideration the above reasons, I therefore do not find appropriate to place the accused person on probation. I sentence the accused to Four (4) years imprisonment.

DATED AT NAIROBI THIS 27TH SEPTEMBER, 2018.

LESIT, J

JUDGE