



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HIGH COURT CRIMINAL CASE NO. 19 OF 2017

LESIT, J.

REPUBLIC.....PROSECUTION

VERSUS

MARGRET KAREMI NJIRU.....ACCUSED

RULING ON SENTENCE

1. The accused **MARGARET KAREMI NJIRU** 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 on 17th 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 for the offence of **Manslaughter** contrary to **section 202** of the **Penal Code**. The plea agreement was entered into pursuant to **section 137H** of the **Criminal Procedure Code**. The court satisfied itself 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 considered the following mitigation given on behalf of the accused by Mr. Ongoro, the accused defence counsel.
 - i. That the deceased was married to the accused and lived as husband and wife.
 - ii. That the accused person is now left as a single parent to their two children who are issues of their marriage with the deceased aged 7 and 17 years respectively.
 - iii. That the accused has reformed while in custody.
 - iv. That she has undergone various courses while in remand which makes her useful to society. She has attained a Diploma in Theological Education (P.C.E.A), Prisoners Journey (A course to reform) and Certificate for Indian Food Catering.
4. The court has considered that the accused has pleaded guilty to the lesser charge and that it followed a successful plea bargaining thus saving the court's precious time.
5. I have considered that the prosecution is treating the accused as a first offender.
6. I have considered that the accused has been in custody since her arraignment in court for the last 1 year and four months.
7. Having taken all these matters into consideration, I find that the facts are clear that the accused stabbed the deceased with a knife on the left thigh after the accused picked a quarrel with the deceased because he did not leave her money for buying dinner. As pointed in the facts of the case, the circumstances in which the offence was committed point to a person who was quick to anger and overreacted in an excessive manner. The deceased died as a result of the single stab wound inflicted by the accused as indicated by the post-mortem report.
8. It is important that a court exercising its power to pass sentence must act judiciously and not capriciously and must be guided by legal principles and other factors including the circumstances of the case. In **Francis Kariko Muruatetu & another and Republic and Others (2017) eKLR.**, the Supreme Court sets out guidelines to assist the courts in the determination of the sentence where mitigation was not

considered prior to the said case. The guidelines are as follows;

“As a consequence of this decision, paragraph 6.4-6.7 of the guidelines are no longer applicable. To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- (a) age of the offender;**
- (b) being a first offender;**
- (c) whether the offender pleaded guilty;**
- (d) character and record of the offender;**
- (e) commission of the offence in response to gender-based violence;**
- (f) remorsefulness of the offender;**
- (g) the possibility of reform and social re-adaptation of the offender;**
- (h) any other factor that the Court considers relevant.**

We wish to make it very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process. This notwithstanding, we are obligated to point out here that paragraph 25 of the 2016 Judiciary Sentencing Policy Guidelines states that:

GUIDELINE JUDGMENTS

Where there are guideline judgments, that is, decisions from the superior courts on a sentencing principle, the subordinate courts are bound by it. It is the duty of the court to keep abreast with the guideline judgments pronounced. Equally, it is the duty of the prosecutor and defence counsel to inform the court of existing guideline judgments on an issue before it”.

9. The sentence this court should impose should meet all the objectives of sentencing including sending a message about the offence that murder cannot be used as an escape from a frustrating marriage.

10. Having taken into account all the factors and the circumstances of this case, including the period so far spent in custody together with the seriousness of the offence, I hereby sentence the accused to imprisonment for three (3) years.

11. Orders accordingly.

Dated at Nairobi this 27th day of September, 2018.

LESIT, J.

JUDGE