



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIM. CASE NO. 48 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

BETH NJOKIACCUSED PERSON

SENTENCE

1. In a judgment dated 19/06/2018, Beth Njoki (“Accused Person”) was convicted of the offence of murder contrary to section 203 as read together with section 204 of the Penal Code.

2. The Learned Judge concluded that the Accused Person was guilty of unlawfully killing B N, a child aged two years with malice aforethought. The Deceased was the biological son of the Accused Person. The Accused Person killed the child by throwing her in an unused well under unclear circumstances. The Accused Person had had problems with the father of her two children forcing her to return home to her mother. It was while she was there that she left with the younger child only to return home without her.

3. The Accused Person later led investigators to the well where the body of the Deceased child was found. When arraigned in Court, she pleaded not guilty forcing the Prosecution to call six Prosecution witnesses to prove its case. In the end, a guilty verdict was returned.

4. After noting the circumstances of the case, I requested for a Probation Report to determine the suitability of imposing a non-custodial sentence. One was filed in Court on 08/10/2018. On the whole it is favourable to the Accused Person. The Report recommends a non-custodial sentence and cites the willingness of the family to assist the Accused Person settle back to life outside custody. Her surviving child is six years old and presently lives with the grandmother. The Report cites the needs of this child to have his mother back as another reason to grant a non-custodial sentence. The Accused Person’s mother and sister (who are, functionally, the only family of the victim) support non-custodial sentence.

5. The Accused Person addressed the Court by reading her mitigation in a statement entitled “Attitude Towards the Offence.” It is so entitled because the Accused Person was responding to a paragraph in the Probation Report which suggested that it was difficult to gauge whether she was truly remorseful for her actions.

6. Both in her oral rendering of the Statement and in its written form, the Accused Person expressed remorse for her actions. I formed the opinion that she was genuine in her remorse. In her statement she also cited the four years she has been in remand as having given her an opportunity to reflect on her actions and reform. She spoke about accepting Jesus Christ as her Saviour and escaping the cultic religious practices which, in part, led her to commit the offence.

7. I have carefully considered the circumstances surrounding this case. In particular, I have considered the following factors which I treat as mitigating circumstances:

a. The Accused has demonstrated remorse and I am persuaded that she is genuine;

b. The circumstances of the incident show that while there was malice aforethought, the Accused Person was in a state of confusion and possible depression from her family situation which, while it does not rise to the level of negating *mens rea*, it diminishes moral culpability;

c. The Accused Person is a young mother of one surviving child who is six years old – and will remain his sole parent;

d. The family of the Deceased urged the Court to commit the Accused Person on a non-custodial sentence;

e. The Accused Person is a first offender; and

f. The Accused Person has been in custody for roughly four years during the pendency of the case.

8. I have not been able to find any aggravating circumstances.

9. Considering all the factors in this case, the context and the surrounding circumstances of this sad case, I have come to the conclusion that justice is best served by sentencing the Accused Person to a non-custodial sentence. No meaningful sentencing objectives would be served by committing the Accused Person to prison at this point. The four years he was in remand have served any objectives which would have been served by a custodial sentence.

10. In the circumstances, I sentence the Accused Person to serve a Probation Sentence for a period of three years under the supervision and direction of the Probation Office, Nakuru County.

Delivered at Nakuru this 25th day of October, 2018.

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JOEL NGUGI

JUDGE