



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KABARNET**  
**HCCRC NO. 22 OF 2017**  
**(FORMERLY ELDORET HCCR NO. 58 OF 2014)**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**EMILY JEPYATOR NGETICH.....ACCUSED**

**JUDGMENT**

[1] The Accused was originally charged with murder contrary to section 203 as read with 204 of the Penal Code, which was later reduced to manslaughter following a plea bargain agreement on the basis that her killing of her deceased brother was unintentional.

[2] The accused stabbed her deceased brother with a knife once in the chest following a domestic argument regarding alleged failure of the deceased to help the accused to take care of their aged father. What seemed to be an innocuous plank in taking the deceased's eggs from the fire, led to an affray resulting in the death of the deceased upon a fatal stabbing by the accused. As presented by the Prosecution the killing was unintentional on account of the accused's drunkenness and the provocative attack by the deceased who wielded a walking stick.

[3] The facts of the case as presented to the accused were as follows:

**"FACTS**

*The accused and the deceased in this matter are siblings. On the 16<sup>th</sup> day of July 2014 at about 8 pm the accused's father, Joseph Chepkeitany was resting in his residence at Kapteno village as he was not feeling well. He was in the company of James Kibet his nephew who had come to check how he was fairing. At that point, the accused entered the house while drunk and started shouting at James alleging that he and the deceased were not assisting her to take care of her ailing father. The deceased arrived with eggs and started preparing them for supper. Before the eggs were ready, the accused took them from the fire as the deceased was not paying attention to her. The deceased became angry and went out of the house and picked his walking stick to attack the accused. The accused armed herself with a panga and locked herself inside the house. She was disarmed a by James who did not know that she had concealed a kitchen knife. The accused then went outside where the deceased was and stabbed him once on the chest. The deceased walked for about 20 meters while shouting for help before he fell down and died instantly. The accused then hid the said knife at the roof of the grass thatched house and hid herself in the bush. She came out of her hiding place after learning that her brother was dead. She was arrested by members of public and showed them where she had hid the knife which was recovered. Later, police officers from Kabarnet police station arrived and rearrested her. Photographs of the*

deceased were taken and the body referred to Kabarnet District Hospital Mortuary where post-mortem was done on the 21<sup>st</sup> July 2014. The cause of death was established to be penetrating chest injury due to sharp force trauma. The accused was charged with the offence of murder which has now been reduced to manslaughter. She was thereafter presented before the doctor at Kabarnet District hospital for mental assessment who confirmed she was mentally fit to stand trial.”

### **Conviction**

[4] The Court convicted the accused of her own plea of guilty for the offence of manslaughter upon her confirmation of the truth of the facts of the case as presented by the Prosecution and set out above. The Court was satisfied of the accused’s fitness to plead and voluntariness of the plea and of the basis for the plea bargain. Accordingly, following the taking of plea in the new charge of manslaughter and confirmation of the facts of the case by the accused, the Court convicted her on own plea of guilty to the charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code.

### **Sentencing**

[5] In considering the **moral blameworthiness of the offender** as required in **Omuse v. R** (2009) KLR 214, the sentence herein imposed on the accused person must reflect the fact that the accused would appear to have used excessive force in repulsing the alleged attack by her brother who was armed with a walking stick. The accused had armed herself with a panga and a knife both, in the opinion of this court, dangerous weapons which the accused knew or ought to have known could inflict fatal injuries. The accused is to wholly blame for the death of the accused, which in the circumstances of the case need not have resulted from his alleged attack on the accused using a walking stick. The accused overreacted and in her drunkenness stabbed her brother to death.

[6] The Court would consider that a sentence of imprisonment for four years would be appropriate in the circumstances of this case having regard to other sentences passed by the courts in similar cases. See *R. v Mwajuma Bashir Salim*, Kabarnet HCCRC No. 33 of 2017 and *R v. James Kimosop*, Kabarnet HCCRC NO. 40 of 2017.

[7] The Court is, however, entitled to take into account the period that an accused has been in custody before sentence in accordance with the Proviso to section 333 (2) of the Criminal Procedure Code as follows:

*“(2) Subject to the provisions of section 38 of the Penal Code (Cap. 63) **every sentence** shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.*

**Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”**

### **Probation Officer’s Report**

[8] The Probation Officer’s Report dated 28/7/2017 recommends as follows:

#### **“PROBATION OFFICER’S REPORT**

### **Conclusion**

*The offender is a mother of three children aged 15, 12, and 10 years respectively. The children are under care of their father. She is a first offender. She is very remorseful about the incident and claims to have learned a lesson on the negative effects of alcohol on behaviour and vows not to indulge in consumption of alcohol ever again. Prior to commission of offence she was living at her home of birth with her father, nephew and her brother the deceased, having deserted her matrimonial home following*

*strained relations with husband as both engaged in consumption of alcohol resulting in fights and quarrels. Her family members and neighbours have discussed her matter at length and though still saddened by the act they resolved to forgive her, believing she has received enough punishment and learnt from what transpired on that day. They accept her being released on a non custodial sentence, however she will not be going back to the homestead and arrangements for her have been made. She will be living with a cousin RisperKiprotich at Kapropita area on the outskirts of Kabarnet town as she plans to re unite with her children and family.*

### **Recommendation**

*Accused is remorseful and ready to start a new life without indulgence in alcohol and has plans of reuniting with her young children. She is willing to abide by all conditions of the probation order. Her family and community welcome her release on a non-custodial sentence. She is recommended for Probation sentence.*

### **CONCLUSION**

[9] The accused caused the death of her brother following an argument while she was drunk and after the deceased had attempted to chastise her with a walking stick. The accused had armed herself with a knife and a panga, the latter of which she was disarmed, but she was able to stab the deceased with the knife inflicting the fatal injury. She initially hid after the stabbing but came out of hiding when it dawned on her that she had killed her brother. She led the people to the recovery of the killer knife leading to her arrest and she has been in custody since the 16<sup>th</sup> July 2014. For her blameworthiness in quarrel and act of taking the deceased's eggs that led to the ensuing fight which resulted in his fatal stabbing, an imprisonment term for a period of 4 years would be appropriate sentence.

[10] However, the accused having been in custody for three (3) years since 16<sup>th</sup> July 2014 while awaiting her trial, and taking onto account that she has three young children aged 15, 12 and 10 who live with their father and who need her maternal care, and noting that deceased's family and neighbours have forgiven the accused for killing her brother, the Court considers that a non-custodial probation sentence is suitable. It is also noteworthy that the accused has discovered the error and consequences of her drinking ways.

### **ORDERS**

[11] For the reasons set out above, having convicted the accused on her own plea of guilty to the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code, and having considered the 3 year period of accused's pre-trial detention, I sentence the accused to serve Probation for a period of ONE (1) year under the supervision of the County Probation Office, Baringo.

**DATED AND DELIVERED THIS 23<sup>RD</sup> DAY OF AUGUST 2017.**

**EDWARD M. MURIITHI**

**JUDGE**

### **Appearances:**

Mr. Miyenda for the accused person

Ms. Macharia Ass. Deputy Director of Public Prosecutions for DPP.