

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL CASE NO. 38 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

M M M.....ACCUSED

SENTENCE

M M M (hereinafter referred to as “the Accused”), was initially charged with the offence of murder contrary to section 203 and section 204 of the Penal Code. An offer was made subsequently by the Defence counsel to plead to the offence of manslaughter, which offer was accepted by the Prosecution. The Accused thereafter pleaded guilty to the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The particulars of the offence were that on 15th April 2015 at Nthangathi village, Kaumoni sub-location, Kilala Loaction within Makueni County, she unlawfully killed David Mutisya Mavindu.

The Accused is the mother of the deceased. On 5th April 2015, the deceased, who was mentally ill, went to the Accused’s house where he found his daughter M M who was then 8 years old. The deceased then hit his daughter on the nose and threw her in a ditch. The Accused who is over 70 years old was in her garden planting, and she heard her granddaughter scream and came running with a *panga* (machete). She inquired from the deceased what the problem was, and the deceased then got hold of a *jembe* (hoe) and started chasing the Accused, which is when the Accused cut the deceased on the wrist of his hand with the *panga*.

The deceased then went to his house in which he used to live alone due to his violent nature, and that on 10th April 2015 his wife Josephine Mbithi Mutisya and son Stephen Mutisya went to the house, and tried to persuade him to go to hospital, but he refused. On 15th April 2015 the Accused went to the deceased’s house and found him sitting on a chair which was leaning against the wall, and he was dead.

The Accused admitted the above-stated facts that were narrated to the Court by the Prosecution. The Prosecution in addition produced as exhibits a post-mortem report on the deceased, which showed that the cause of death was a severe injury to the right wrist which severed the radial artery leading to profuse bleeding and leading to shock. The prosecution also produced photographs of the deceased as he was found on the chair, and his psychiatric clinic cards and reports.

The Accused was convicted of the offence of manslaughter on her own plea of guilty, and I am now called upon to pass sentence bearing in mind that the maximum sentence for the offence of manslaughter is life imprisonment. I have considered the facts of the case and the circumstances in which the deceased’s death occurred. It is evident that the deceased was the aggressor due to his mental illness, and that the Accused was acting in defence of her granddaughter and also in self-defence. The deceased also refused to go for medical treatments which may have arrested the bleeding that caused his death.

In addition, taking into account that the Accused has been in custody for almost one year since her arrest in April 2015, I am of the view that she has served enough punishment for an offence that was clearly not intended. I accordingly sentence the Accused to **the period so far served, and order the Accused to be hence forth released from custody unless otherwise lawfully held.**

Orders accordingly.

DATED AND SIGNED AT MACHAKOS THIS 21st DAY OF MARCH 2016.

P. NYAMWEYA

JUDGE