



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO.96 OF 2015**

*(An Appeal arising out of the conviction and sentence of Hon. Ngumi - SRM delivered on 15<sup>th</sup> April 2015 in Githunguri SPM. CR. Case No.332 of 2015)*

**JENNIFER NJERI MWANGI.....**  
**APPELLANT**

**VERSUS**

**REPUBLIC.....RESPOND**  
**ENT**

**JUDGMENT**

The Appellant, Jennifer Njeri Mwangi was charged with **manslaughter** contrary to **Section 202** as read with **Section 205** of the **Penal Code**. The particulars of the offence were that on 3<sup>rd</sup> April 2015 at Githiga Trading Centre, Githunguri in Kiambu County, the Appellant unlawfully killed John Njenga Wamaitha. When the Appellant was arraigned before the trial magistrate's court, she pleaded guilty to the charge. She was convicted on her own plea of guilty and sentenced to serve life imprisonment. The Appellant was aggrieved by her conviction and sentence. She has filed an appeal challenging both conviction and sentence.

In her petition of appeal, the Appellant raised four (4) grounds of appeal challenging her conviction and sentence. She faulted the trial magistrate for convicting her on the basis of a plea of guilty that was equivocal. She took issue with the fact that the trial court had not safeguarded her rights as provided under **Articles 49 & 50** of the **Constitution** when convicting her. She was aggrieved that the trial magistrate had failed to appreciate the circumstances obtaining at the time of the incident that led to the charge which in her view supported her contention that she was acting in self defence and therefore should not have been convicted of the charge. She faulted the trial magistrate for improperly assessing her demeanour and thereby sentencing her to serve a custodial sentence that was inappropriate. During the hearing of the appeal, Mr. Nyaberi, learned counsel for the Appellant amplified the grounds of appeal. He submitted that the plea of guilty that was recorded was ambiguous. He explained that the court should have explained to the Appellant the consequence of pleading guilty to the charge before accepting her plea of guilty. He submitted that the language of the court was not recorded in the proceedings. He stated that the Appellant was not allowed to communicate with her advocate neither was she given sufficient time to prepare her defence. He argued that the Appellant was influenced by the police to plead guilty to the charge. He stated that the Appellant was detained by the police for a period of 11 days before she was brought to court to plead to the case. He was of the view that in the circumstances therefore, the proceedings were a nullity. He submitted that the Appellant should have been sentenced to serve the least severe sentence prescribed by the law. He was of the opinion that the sentence imposed on the Appellant was harsh and excessive due to the fact that the trial court had wrongly evaluated the demeanour of the Appellant. He urged the court to either order the Appellant to be retried or alternatively she be acquitted.

Ms. Nyauncho for the State opposed the appeal on conviction. She submitted that the Appellant was properly convicted after she pled guilty unequivocally to the charge. However on sentence, Ms. Nyauncho agreed with the Appellant that the sentence of life imprisonment was unjustified in the circumstances. She urged the court to appropriately review the sentence.

Before this court rendered its judgment, it directed for a probation report to be prepared in respect of the Appellant. The probation report dated 19<sup>th</sup> April 2016 was handed to the court on the same day. The court has considered the issue of sentence with the benefit of the probation report.

This being a first appeal, it was the duty of this court to re-consider and to re-evaluate the proceedings before the trial court before arriving at its independent determination whether or not to uphold the conviction of the Appellant. In the present appeal, the thrust of the Appellant's appeal against conviction is that the plea of guilty that was recorded by the trial court was equivocal. Having perused the proceedings before the trial magistrate's court, it was clear to this court that the trial magistrate applied the rules on the recording of the plea of guilty as laid down in the case of **Adan -vs- Republic [1973] E.A. 445**. The plea was taken in Kiswahili language, a language the Appellant professed to understand. The charge and all the elements thereof were explained to the Appellant. Upon being asked to answer the charge, she pleaded guilty to the charge. Plea of guilty was entered. The facts of the case were read to the Appellant. She admitted the facts to be correct. She was convicted on her own plea of guilty. This court cannot therefore fault the trial magistrate for entering the plea of guilty in the circumstances of the case.

The Appellant has a valid case when she complains that she was detained for a period of 11 days before she was brought to court to have the plea taken. It is now settled law that where an accused is detained without lawful authority and without an excusable explanation for a period of more than 24 hours before being brought to court, such an accused person has a remedy in civil court for damages and not to have the charges brought against her declared a nullity. In any event, before such draconian action can be taken by the court, the prosecution must be given an opportunity to give an explanation why there was a delay in bringing the Appellant to court. Nothing turns on that point on this appeal. As regard to the complaint by the Appellant that she was not given ample opportunity to instruct an advocate to appear on her behalf in the case, from the court record, it is clear that the Appellant did not indicate to the court that she desired to instruct an advocate to act on her behalf in the case. Neither did she request for more time to prepare for the case. Where an accused person desires to be represented by an advocate, such an accused person must indicate to the court of such wish. In the present appeal, there was no indication from the record that the Appellant notified the court that she wished to be represented by an advocate. The upshot of the above reasons is that the appeal lodged by the Appellant against conviction lacks merit and is hereby dismissed.

On sentence, the Appellant is on firmer ground. The Appellant is a first offender. From the facts of the case and the social report prepared by the probation officer, it was clear that the deceased was killed as a result of a domestic quarrel with the Appellant. The Appellant alleged that the deceased was the one who wanted to stab her with a knife in the first place before she wrested the knife from him and stabbed him on the neck. This court takes note that at the time of the incident, the Appellant was five months pregnant. She was also taking care of another young child at the time. The two children are currently staying with the Appellant in prison. Taking into consideration the entire circumstance of this case, this court agrees with both the recommendation made in the probation report and the submission made by the Appellant and the prosecution that indeed the custodial sentence of life imprisonment imposed on the Appellant was harsh and excessive in the circumstances. The Appellant had been in prison for a period of one (1) year. This court is of the considered view that the Appellant deserves to serve a non-custodial sentence. In the premises therefore, the custodial sentence imposed on the Appellant is set aside and substituted by a sentence of this court sentencing the Appellant to serve two (2) years probation. It is so ordered.

**DATED AT NAIROBI THIS 22<sup>ND</sup> DAY OF APRIL 2016**

**L. KIMARU**

**JUDGE**