

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 101 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

PHOEBE OWANDO BWIRE.....ACCUSED

SENTENCE

Phoebe Owando Bwire is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 2nd day of December 2012 at Mountain View in Nairobi County she murdered Andrew Ochama Okondo. She was arraigned in court on 17th December 2012 when the plea was taken. She denied committing the offence. The case did not proceed to hearing immediately because the defence offered to plead to the lesser charge of manslaughter. Instructions in that regard were not forthcoming from the Office of the Public Prosecutor and the matter was fixed for hearing. After several adjournments hearing commenced before me on 17th February 2016. I took evidence of two witnesses on that day. However, the matter did not proceed beyond that point. Before any other witness could be summoned in court, the defence informed the court that they wished to plead to the offence of manslaughter. Negotiations with the Office of the Public Prosecutor commenced and culminated in a Plea Bargain Agreement. The Agreement was accepted by the court and the charge of murder amended to reflect manslaughter. The accused pleaded guilty to manslaughter and admitted the facts of the case as presented by the prosecutor. Consequently, this court convicted the accused.

The facts of the case are that a quarrel ensued between the accused and the deceased who were man and wife over accusations by the deceased that the accused was having extra-marital affairs. The couple was at the time taking alcohol in their house in Mountain View Nairobi. The accused was ordered by the deceased to park her belongings and leave their matrimonial home with her children. The accused resisted and this angered the deceased who picked a kitchen knife leading to a struggle ensued between them. The accused overpowered the deceased, took the knife from him and stabbed him on the left side of the abdomen. On noticing what she had done, she administered first aid on the deceased and managed to stop the bleeding. The couple went to bed. On the following morning the deceased reported the matter to the police. He was taken to Kikuyu Mission Hospital where he was referred to Kenyatta National Hospital. He died in hospital while undergoing treatment. The injuries leading to his death were confirmed by Dr. Midia who examined the body of the deceased. The post mortem form was produced in court as an exhibit.

In mitigation the accused told the court that she is a mother of five children who are now being taken care of by her sister; that she is HIV positive and has been in custody for almost four years. The accused further told the court that she was remorseful for the death of her husband and that she has learnt some useful skills while in custody and now is capable of handling issues in a better way. She said that she is a first offender and that she administered first aid to the deceased and accompanied him to the police station to report the matter. She asked the court to hand her a non-custodial sentence.

Before passing the sentence this court called for a probation report. It was filed in court on 14th December 2016. I have read the report which confirms the information provided by the accused. I have considered the circumstances leading to the death of the deceased. Both the accused and the deceased were drinking when a quarrel ensued after the deceased accused his wife of infidelity. After the stabbing the accused assisted the deceased to stop the bleeding. It is my view that had they sought medical treatment immediately, the accused would perhaps have been saved. I have also considered that the accused has

been in custody since December 2012 and that she had offered to plead guilty to the lesser charge of manslaughter. Had the Office of the Public Prosecutor accepted her offer at that time, the delay in finalizing this matter would have been avoided. In my considered view, this is a good case for non-custodial sentence. The accused has shown genuine remorse by word and deed in trying to save her later husband. I will and do hereby place the accused on probation for a period of eighteen (18) months during which time she will be under supervision and counseling. I order her immediate release from custody unless for any other lawful cause she is held in custody. She shall be placed under the care of Probation Officers in the area in which she resides for proper supervision and counseling. It is so ordered.

Dated, signed and delivered this 20th December 2016.

S. N. Mutuku

Judge