

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 92 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

E W..... ACCUSED

RULING

E W was initially charged with the offence of murder contrary to section 204 of the Penal Code. The particulars of the offence were that on 12th day of November, 2011 at Githurai Kimbo Location, within Ruiru District, Nairobi County murdered D W N. She was arraigned for plea on 22nd November, 2012. She denied the charge and was remanded at the Kabete Rehabilitation Centre on account of her age.

Before her trial commenced, she entered into a plea agreement with the ODPP and a plea agreement was filed in court. Following the plea agreement, she pleaded guilty to the lesser charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code and was duly convicted.

According to the facts contained in the plea agreement and read to the court by the prosecution counsel, the accused (E W) and the deceased (D W N) were married and resided at Githurai Kimbo Location. That on 12th November, 2011, at about 1pm a neighbour, one David M K heard them quarreling and went into their house to find out what was happening. He asked them to settle their differences and left. Shortly thereafter, another neighbour A M saw the accused outside with blood stained clothes. The accused borrowed some money from her to take the accused to hospital. Yet another neighbour S N rushed into the couple's house when he heard the commotion only to find the deceased lying on the floor near the entrance to the house with blood gushing from his chest. The neighbours rushed the deceased to a nearby clinic where a nurse referred them to St. John's Hospital where he was pronounced dead on arrival. They reported the matter to the police who visited the scene and recovered a kitchen knife which was used as the murder weapon. The accused was later arrested and charged as aforesaid.

E's case is a paradox of sorts and an indictment of society for its failure to deal with juvenile delinquency within the frame work of the Convention of the Rights of the Child and the Children Act. According to the probation report filed in court the offender comes from a stable but economically challenged family of two parents and four children who reside in a single rented room at Neebu Shopping Centre, Kiambu County. She dropped out of school in class four and eloped with a man in the neighbourhood with whom she cohabited for a short period before moving in with relatives, friends and later going back home. The man was said to have initiated her into alcohol and drug abuse. She was known to keep the company of persons of questionable character and she was clearly beyond parental control.

She had cohabited with the deceased, a man aged 32 for four months prior to the incident. According to documents filed in court, the offender was 16 at the time. When she was first arraigned in court the court observed that she was a minor and remanded her in custody at the Kabete Rehabilitation Centre.

At age 16 when she committed the offence, the accused was clearly still a child under both International and Municipal law. The United Nations Convention on the Rights of the child gives recognition to the rights of the child, to *inter alia* health, education, protection from all forms of abuse and exploitation. The Children Act (Cap. 141) echoes the same rights with specificity. I take the view that suitable intervention should have been made through the juvenile justice system when the accused

dropped out of school and fell into delinquency and out of parental control. I also take the view that her so-called successive marriages while under age and lacking capacity to consent to such marriages were purely acts of sexual exploitation of a minor contrary to law.

Having taken all factors into consideration I consider this case fit for non-custodial sentence. I am inclined to grant the accused a second chance to mend her ways and hopefully become a productive member of the society. I observe from the probation report that her family and that of the deceased are supportive of her release. However, I am of the firm view that the accused, having led a life of delinquency for so long, shall benefit from close supervision in a structured environment.

For the reasons stated above, I sentence her to serve 3 years' probation. She shall serve the first year at Nakuru Girls Probation Hostel and thereafter be placed for the remaining 2 years under the close supervision of the relevant probation office.

Ruling delivered, dated and signed at Nairobi this 29th day of January, 2015

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

.....: Accused

.....: For the accused

.....: For the State