



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL REVISION NO. 12 OF 2014

LUCY WANJIRU KARIUKI APPLICANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

THE APPLICANT'S CASE

1. **LUCY WANJIRA KARIUKI**, the applicant has applied for revision of her sentence of four years imprisonment imposed upon her by the court of the Senior Principal Magistrate on 12.2.14 in respect of the offence of manslaughter contrary to section 205 as read with section 202 of the Penal Code (Cap 63) Laws of Kenya.
2. She has listed nine grounds in support of her application for revision pursuant to section 362 and 364 of the Criminal Procedure Code (Cap 75) Laws of Kenya.
3. In a condensed form her grounds are that she is a first offender and was remorseful for causing the death of her beloved husband, who was also the father of their daughter. She has also stated that their child accompanied her to prison, but that she was forced to surrender her to her mother for care after the child had become very sick. She has further stated that her mother is sick and widowed.
4. Furthermore, the applicant has stated that she has undergone counseling in prison and has accepted Jesus as her saviour. She says that she called a relative of the family of her deceased husband and apologized. Additionally she has explained to the family of the deceased the circumstances under which the death occurred and they agreed with her that it was not intentional.
5. It is one of her grounds of revision that she was the only bread winner for both of her child and mother. She adds that her mother is sickly. The applicant also states that she has been traumatized ever since she was imprisoned. And that her prolonged imprisonment will jeopardize her life.
6. Finally the applicant has urged the court to impose upon her a suspended sentence, so as to enable her to take care of her child and her widowed mother.
7. The applicant made oral submissions to the court. She submitted that she has a three year old child. She also asked for forgiveness from the court. It was also her submission that she did not intend to cause the death of her husband. The applicant also stated that she is a 23 year old and was operating a business of selling sugar, salt, oil and rice before this case.

THE CASE FOR THE REPUBLIC/RESPONDENT

8. Ms. Mbae for the state opposed the applicant's application. She submitted that the offence of manslaughter carries a life imprisonment sentence. She also submitted that the sentence of four years imposed upon the applicant was lenient.

9. According to her, the fact that the applicant had reformed and was a young mother of one child were not sufficient reasons for her to avoid punishment. She invited the court to peruse the postmortem report. The report shows that there was:

“Knife present on anterior chest wall having penetrated from front to back, downwards right to left on anterior chest wall (left) at the level of the nipples.”

10. The same report also shows that the diaphragm was perforated on the left side and the anterior wall of the stomach was also penetrated. According to the report the deceased was aged 21 years old and the cause of death was hemorrhage secondary to sharp penetrative injury.

THE APPLICABLE LAW

11. I allowed this revision to proceed as an appeal hearing because the applicant was sentenced to four years imprisonment in respect of the conviction for manslaughter. Additionally she also appeared to challenge her conviction as well. For these reasons this revisional application was treated as an appeal hearing. All the principles that govern the hearing and determination of appeals were applied to this revisional application.

12. This is a first appeal. According to the Court of Appeal in ***Okeno v R (1972) E.A. 32***, I am required as a first appeal court to scrutinize the evidence produced at trial. Thereafter I have to make my own independent findings and conclusions while deferring to the issues of credibility as found by the trial court. The reason being that that court was better placed to access the demeanour of witnesses because it saw them, an advantage not enjoyed by this court.

13. Furthermore, I am also required according to ***Wanjema v R (1971) E.A. 493*** to bear in mind that sentencing is a matter for the discretion of the trial court. It should not be interfered with unless the trial court proceeded on a wrong principle in imposing the sentence, or that it took into account extraneous matters in imposing the sentence.

14. This court may also interfere with the sentence imposed if it is shown that the sentence imposed was either manifestly lenient or manifestly excessive. Finally, the court may also interfere with the sentence if the trial court failed to take into account a relevant factor.

15. In view of the foregoing applicable law, I now turn to re-evaluate the evidence produced at trial. The evidence led by the prosecution through eight witnesses is that the applicant and her deceased husband were tenants of *Patrick Njeru Mbarire (P.W.1)*.

16. According to P.W.1 he heard screams in the night of 3.1.2013 at 10.00 p.m at his plot at Kianjokoma market. He drove there and saw the applicant standing next to a stabbed man, who was lying down. The applicant stood next to the stabbed man, with the a kitchen knife lodged in this chest. P.W.1 further states that the deceased lay 2 metres away from the door of the applicant's house.

17. P.W.1 then reported the matter to the police (P.W.3), who went to the scene of murder. According to the police officer No. 810100 AP Cpl. James Maina, the body of the deceased lay 3 metres from the door, with a knife lodged into his chest. There were bloodstains starting from near the room outwards.

18. The scenes of crime police (P.W.8) were called. They took photographs of the scene. No. 21703 CIP Hatton Lutta (P.W.8) visited the scene. He took photographs which he produced as prosecution exhibits Pex 1,2 and 3. According to him the house of the applicant was one roomed. He also states that there were signs of struggle with blood stains inside the room on the floor.

19. When she was placed on her defence, the applicant made an unsworn statement and called no witnesses. It is her evidence that the deceased was her husband. They both lived at Kianjokoma trading centre. According to her the deceased returned to their one roomed house and appeared to be drunk. The deceased told her that he was going to drink the blood of the applicant and their child. He also told her that, satan had told him to drink their blood. The deceased then asked for the child. He then gave the child some alcoholic drink.

20. The applicant then picked the child from the deceased. The deceased then threatened to kill both the child and the applicant. A quarrel ensued followed by a struggle. In the course of the struggle the kitchen knife entered the deceased. She then rushed out and the deceased followed her. She called the land lord and proceeded to scream. Many people arrived at the scene and in the end she was arrested and detained at Manyatta Police Station.

21. I have on my own re-evaluated the entire evidence. I find that there was no eye witness to this offence. The evidence against the applicant is therefore of a circumstantial nature. The one roomed house was occupied by the deceased and the applicant. I also find that the deceased was drunk during the material night. I further find that the applicant stabbed the deceased in the left chest with a kitchen knife, which penetrated the nipple area in a perpendicular angle downwards to the stomach piercing both the stomach and diaphragm.

22. In the circumstances, I also find that it was the applicant who inflicted the deep penetrating stab injury. I totally reject the assertion by the applicant that the knife "entered" the chest of the deceased accidentally.

23. After re-assessing the entire evidence I have come to the same conclusion like the trial court that it was the applicant who caused the death of the deceased.

The conviction is sound as it is supported by abundant evidence.

24. In imposing a sentence of four years imprisonment the trial court took into account that she was a first offender and was also remorseful. That court also took into account that the applicant had a young child. Considering all these matters the court imposed the sentence stating that the applicant caused the death of her husband. The court went further to state that domestic violence needs to be deterred and the fact that the applicant had a young child was not a reason to avoid being punished.

25. I have borne all the above in mind. I have also considered the fact that the applicant has received Jesus as her savior and that she has reformed. Finally I have also considered the fact that the applicant has urged for forgiveness and that her mother is widowed and sickly. And for that reason she should be released to look after her and her child.

26. I have borne in mind her mitigation factors and the principles governing the imposition of a sentence by a trial court. I find that the trial court followed the proper principles in sentencing the applicant. Although the sentence imposed was lenient, it was not manifestly lenient to warrant being interfered with by this court.

27. The upshot of this is that the revision fails in its entirety and is hereby dismissed.

JUDGEMENT DATED, SIGNED and DELIVERED in open court at **EMBU** this.. 7th day of **DECEMBER .2015**

In the presence of applicant and counsel for the respondent.

Court clerk Mr Nyaga

J.M. BWONWONGA

JUDGE

7.12.15