



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
(MILIMANI LAW COURTS)
CRIMINAL CASE 7 OF 2009
REPUBLIC
-VS-
FLORENCE GATHONI NGUGI
SENTENCE

On 30th April, 2009, the defence Counsel made passionate submissions in mitigation on behalf of the accused. She stated inter alia, that the accused was 4 months pregnant. Following the above revelations, the court made an order that the said pregnancy be examined and be confirmed at the Kenyatta National Hospital. The same is the largest referral hospital, *not* only in Kenya but also the Eastern African region. I am reliably informed by the PDR, Criminal Division that the said report has not been submitted to court. Though I am *not* a trained health worker, I am aware that with modern technology, a pregnancy test can be carried out in less than ten minutes. The court *cannot* guess the reason why the report has *not* been availed to help the court make an informed decision. In view of the above, I hereby order that the accused be taken today to Pumwani Maternity Hospital to be examined as to whether she's pregnant. The doctor/gynecologist should also indicate roughly, the period of the pregnancy. In order to facilitate the passing of the sentence, the Officer-In-Charge of Pumwani Hospital is hereby directed to present the report on 13th May, 2009 at 10.00 am. Accused remanded in custody.

MUGA APONDI

JUDGE

6TH MAY, 2009

REPUBLIC OF KENYA
AT NAIROBI
CRIMINAL CASE NO. 7 OF 2007

REPUBLIC

-VS-

FLORENCE GATHONI NGUGI

SENTENCE

From the record, it is apparent that the accused is a first offender who has pleaded “guilty” to the lesser but cognate charge of manslaughter, contrary to Sec. 202 as read with Sec. 205 of the Penal Code, Cap. 63, Laws of Kenya. Besides the above, it is apparent that the deceased was the husband of the accused for the last ten years. Unfortunately, during that period, the couple had **not** been blessed with any child. Surprisingly, after the accused was arrested, she indicated that she was pregnant. As a matter of caution, the court ordered for a medical examination to confirm the above. Today, at around 9.00 am, I received a report from Kenyatta Hospital that the accused has a pregnancy of 19 weeks and 3 days. The good doctor was kind enough to even enclose the ultra-sound report. Though I could **not** interpret the photos, the report confirm the pregnancy. Apart from the above, it is apparent that on the material day, both the accused and deceased had taken alcohol. Thereafter, the couple differed and fought over a love affair that the deceased was purportedly having. Though the facts that were enumerated by the learned State Counsel initially indicated that the deceased had only received one blow, he later clarified at the end that the deceased had several injuries. That was after the court drew the attention of the learned State Counsel to the post-mortem report. In addition to the above, the court has considered the lengthy and moving mitigating factors by the defence counsel. Significantly, I have considered the family responsibilities of the accused. However, the court is of the considered opinion that the accused was economical on the truth. That is because the deceased had sustained several injuries as clearly shown by the post-mortem form. My interpretation is that the accused had intended to cause harm to the deceased. It is now ridiculous and ironical that the accused wants to use her pregnancy to gain leniency from this court. I do feel that for the ends of justice and fair-play to be met, the court needs to impose a custodial sentence on the accused. Due to her pregnancy, I hereby sentence the accused to 3 months imprisonment. Had it not been for her pregnancy, then the court would have ordered for a longer custodial sentence.

Right of appeal explained.

MUGA APONDI

JUDGE

13TH MAY, 2009