Republic v Mbuya (Criminal Case 10 of 2020)
[2024] KEHC 795 (KLR) (1 February 2024) (Sentence)

Neutral citation: [2024] KEHC 795 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

CRIMINAL CASE 10 OF 2020

SC CHIRCHIR, J

FEBRUARY 1, 2024

BETWEEN

REPUBLIC ..... PROSECUTION

AND

SOLPHINE AKHUSAMA MBUYA ..... ACCUSED

SENTENCE

1. The accused herein was initially charged with the murder of Seline Nanzila Akondo. Pursuant to a plea bargain, the charge was reduced to manslaughter. The accused pleaded guilty to the charge and was convicted on her own plea.

2. A presentencing report was prepared by the probation officer and parties were given a chance to make their submissions

The Accused's Submission

3. Through her counsel Mr. Onsango, the Accused submits that the killing was not motivated by malice, that it was a case of love -triangle that went bad; that she found the deceased in bed with her boyfriend.

4. The Accused further submits that she is remorseful; that she has 3 young children born from two different fathers; that she is a sole breadwinner as she does not live with any of her children's fathers. She further submits the victim's family; the community and her own family are ready to accept her back.

5. She prays for a non-custodial sentence or a discharge. The accused has relied on the case of *R v Joseph Kibet Rotich* [2016] eKLR and *R. v Kipchirchir Ruto* [2006] eKLR where the court meted a sentence of 1 day in each of the decisions. It is her final submissions that for the interest of her children, she should be released.

Prosecution's Submission

6. While pointing out that the prescribed sentence for the subject offence ranges from one day to life sentence, Ms Osoro for the state submits that the accused acted with malice. She points out that the deceased was on her way home when the accused waylaid her and stabbed her at the back. That the deceased was caught unaware. The prosecution argues that even if there was a love -triangle, she chose to go after the weaker party, the deceased, and not the boyfriend.

7. While refuting the Accused's submission that she acted on impulse, she points out that as she took time to look for the knife. She further submits that the accused has not offered any apology to the victim's family, an indication that she has never appreciated the gravity of her offence.

8. The prosecution finally submits that the aggravating factors outweigh the mitigating factors.

9. I have considered the rival submission as well as the probation report. The report indicated that the accused is a first offender; she relates well with the community. However, she has not sought any reconciliation with the victim's family.

10. I have also perused the plea-bargaining agreement and taken note of the circumstances of the offence. It is evident that the accused waylaid the deceased after she had earlier seen her with the accused's boyfriend, Shabir. The attack took place on the road not at the house of Shabir, where the deceased and Shabir had been. The weapon used to kill the deceased was a kitchen knife. It is evident that the she had had planned to harm the deceased. She has not sought any reconciliation with the victim's family.

11. I refuse to accept the suggestion that this was a spur- of- the- moment attack. It was clearly premediated.

12. However, I have also considered the fact that the deceased is a first offender, she is remorseful. I have further taken into consideration the fact that she is a mother to young children who still need her nurturing. However, a life has lost. The waylaying and the surprised attack and the stabbing on the back of the victim betrays the accused's real intention as aforesaid.

13. Taking into consideration all the foregoing I hereby sentence the accused herein to 7 years in prison. The sentence will run from the date of conviction

14. Right of Appeal- 14 days

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 1ST DAY OF FEBRUARY, 2024

S. CHIRCHIR

JUDGE

In the presence of:

The Accused.

Rono- Court Assistant

Mr. Leina for DPP