Republic v Makokha (Criminal Case 5 of 2018)
[2024] KEHC 4741 (KLR) (9 May 2024) (Sentence)

Neutral citation: [2024] KEHC 4741 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT GARISSA

CRIMINAL CASE 5 OF 2018

JN ONYIEGO, J

MAY 9, 2024

BETWEEN

REPUBLIC ..... PROSECUTION

AND

ELIZABETH NAGILA MAKOKHA ..... ACCUSED

SENTENCE

1. Accused person herein is charged with the offence of Murder contrary to Section 203 as read with section 204 of the *Penal Code*. Particulars are that on 7-03-2018 at Bura Sagare in Garissa Subcounty within Garissa County she murdered Abraham Masinde Nyongesa. Upon return of a plea of not guilty, the matter went to full trial. Upon conclusion of the trial, accused was convicted of a lesser charge of manslaughter contrary to Section 202 as read with section 205 of the *Penal Code*.

2. According to the prosecution's record, accused is a first offender. On her mitigation, she prayed for leniency thus expressing remorse. She invited the court to consider circumstances under which the offence was committed and that she had quarreled with the deceased before a fight ensued leading to the injuries that resulted to the death of the deceased. He urged the court to consider that she has two children to look after now that her husband the deceased is no more. She invited the court further to take note that she too suffered injuries in the course of the fight.

3. I have considered the facts of the case. There is no doubt that the accused and the deceased fought over infidelity allegations against each other. Apparently, they fought using a knife consequences whereof the deceased succumbed to injuries sustained out of the fight as the accused got treated and discharged before being charged. This court is being asked to exercise leniency in the course of exercising its discretion.

4. It is trite that sentencing is at the discretion of the trial court. See *Kipkoech Kogo v R.* Eldoret Criminal Appeal No 253 of 2003 where the Court of Appeal stated thus:-

> " sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered (see also *Sayeka v R.* (1989 KLR 306)"

5. Similar position was stated by the court of appeal in *Bernard Kimani Gacheru v Republic* [2002] eKLR where it was stated that:

> " It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist."

6. It is however worth noting that in exercise of its discretion, a court is duty bound to take into consideration certain guiding principles interalia; the aggravating nature of the offence committed; the mitigating factors; pre-sentence report; previous criminal record of the accused; and victim impact assessment report. See *Judiciary Sentencing Policy Guidelines* clause 4.5 of 2023.

7. This court is pretty aware of the objectives of sentencing which are also captured in the judiciary sentencing policy guidelines clause 1.3.1 of 2023 as; retribution, deterrence, rehabilitation, restorative justice, community protection, denunciation, reconciliation and reintegration.

8. The accused is remorseful. The pre-sentence report has described her as a good person ready to reform and that society is ready to accept her back. The report recommended non-custodial sentence which accused's in-laws are opposed to. However, I have looked at the cause for the fight which is infidelity which implies both parties were to blame. Accused is aged 31 yrs hence needs an opportunity to reform and take care of their young and innocent children.

9. I am however a live to the fact that the accused has been in custody from 9th March 2018 up to now translating to 6 years 2 months which should be taken into account when computing sentence pursuant to Section 333(2) of the *CPC*.

10. Considering the maximum penalty of life imprisonment provided for against the charge of manslaughter and having considered the period spent in remand custody, I find the sentence of five years imprisonment appropriate. Accordingly, the accused shall serve a period of five years in jail commencing from the date of this sentence exclusive of the period spent in remand custody.

ROA 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 9TH DAY OF MAY 2024

J.N.ONYIEGO

JUDGE