



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO. 58 OF 2018

LESIIT, J.

BKM.....ACCUSED

VERSUS

REPUBLIC.....RESPONDENT

RULING ON SENTENCE

1. The accused, **BKM**, was initially charged with the offence of **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence were that;

“BKM on the 15th day of October, 2018 at Utawala Estate in Embakasi Sub County within Nairobi County murdered SMK.”

2. The accused pleaded not guilty to the offence on 20th May, 2019. After a successful plea bargaining and plea agreement, the charge was reduced to that of **manslaughter** contrary to **Section 202** of the **Penal Code**. The accused pleaded guilty to the lesser charge.

3. **Section 205** of the **Penal Code** provides for the penalty for the offence of manslaughter. The said section provides that persons convicted of manslaughter are liable to imprisonment for life.

4. Learned Prosecution Counsel, Ms. Kimani, urged that the prosecution has no previous records of the accused, and treated the accused as a first offender. I therefore treat the accused as a first offender.

5. I have considered that the accused was arraigned before this court on 15th November 2018. He has been in custody for a period of two years and seven months during the pendency of his case. I have also considered that the accused pleaded guilty to the lesser charge of manslaughter.

6. I have further considered the accused person's mitigating circumstances filed in court on 3rd May 2021, by his counsel, Mr. Ondieki. Counsel for the accused urged that the accused has been battling a mental condition described as a psychosis disease which requires treatment. He submitted that the accused has been on medication since he was a young boy until the day he left home for Nairobi. He stated that in June 2017, the accused's condition worsened and he sought treatment at Machakos Level 5 Hospital where he was put on medication, which he is required to use on a daily basis.

7. Counsel for the accused urged that on the material date of 15th October 2018, the accused failed to take his prescriptive medicine which caused him to experience hallucinations. He stated that the accused saw his daughter in bed with his wife, and thought that the wife was in bed with another man, which caused him to kill his daughter. He urged that the accused was not himself when he committed the crime. He urged that the accused's mother and wife are willing to welcome him back home, and help with his treatment. Counsel urged this court to grant the accused a non-custodial sentence.

8. The accused asked the court to allow him to say something. He stated that he was remorseful for his actions, and asked for forgiveness. He stated that he has reformed since his incarceration. He submitted that he was a young man aged 27 years, and promised not commit any other crime.

9. I called for a Pre-Sentencing Report which was filed on 18th June 2021. According to the report, the accused is married and had one child (the deceased). He comes from a family with a history of mental illness. The accused was diagnosed with schizophrenia. The accused, who

was interviewed, stated that he was remorseful for his actions and pleaded for leniency.

10. The accused's mother was also interviewed. She stated that three of her children, including the accused, had a history of mental illness. She stated that any time the accused experienced a manic episode, she took him to Machakos Level 5 Hospital, and sometimes Mathare Mental Hospital. The family of the accused described him as a person of good character, and linked his offending behavior to his illness. They pleaded with this court to be lenient, and promised to ensure the accused gets proper treatment.

11. According to the Victim Impact Statement, the wife to the accused, who is the deceased's mother was overwhelmed with grief and was yet to come to terms with the loss of her only child. The family of the accused's wife stated that she was greatly traumatized by the death of her daughter, and prayed for justice for their kin. They stated that they wanted nothing to do with the accused.

12. I have taken into account the circumstances of the case. The deceased, who was 2 years of age, was a daughter to the accused. On the material night, the accused came home and found his wife in bed with the deceased. The accused pulled the deceased from bed, placed her on the floor and started stabbing her with a knife. The accused's wife ran away from the house to seek help as the accused pursued her with a knife. Neighbours of the accused reported the matter to police officers who were on patrol duties, and the accused was arrested at his house. He was arrested while holding the knife in his hand.

13. According to a post mortem report dated 18th October 2018, the deceased had multiple stab wounds on the chest and anterior neck, and a stab wound on the abdomen with small gut protruding on the surface. The pathologist formed an opinion that the deceased died due to multiple penetrating injuries on the chest and abdomen.

14. The accused has admitted to these facts. He stated that he was not in his right frame of mind when he committed the offence. He stated that he suffers from a mental illness which causes him to hallucinate. Counsel for the accused stated that on the fateful day, the accused failed to take his medication. This caused him to experience a manic episode, and the accused thought his wife was in bed with another man, which caused him to stab his daughter to death.

15. I have considered the fact the accused suffered from a mental disorder which caused him to kill his own daughter. According to the medical report from Mathari Hospital dated 4th April 2019, the accused was first assessed at the institution on 25th October 2018. He was treated for Schizophrenia and was initially found not fit to plead. The accused was reviewed on 5th February 2019 and his treatment was continued. After further assessment by Dr. Ochieng on 4th April 2019, the accused was found fit to stand trial. The Pre- Sentence Report also corroborated these facts.

16. I have considered the circumstances of this case, the accused's mitigation, the pre-sentence report and the fact that the accused has saved the court's time and resources by pleading guilty to the lesser charge of manslaughter.

17. I have also considered the period of approximately two and a half years that the accused has been in remand custody pending this case. I find that the accused was the author of his mental problems for deliberately failing to take medication as required. What he did to his daughter is a direct consequence of his action to stop medication. He is not suitable for a non-custodial sentence. He needs to have an opportunity to experience incarceration in order to help him understand the seriousness of his actions.

18. Having taken all these into consideration, I hereby sentence the accused to three (3) years imprisonment from today's date.

DATED AT NAIROBI THIS 8TH DAY OF JULY, 2021.

LESIT, J

JUDGE

In the presence of:

Kinyua - court assistant

Ms. Gichuhi for the State

Mr. Ondiek for the accused

Accused present

LESIT, J.

JUDGE