



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**CRIMINAL CASE NO. 68 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VS.**

**TERRY TERESIA ROSELINE NYAMBURA MBURU.....ACCUSED**

**RULING ON SENTENCING**

- 1. TERRY TERESIA ROSELINE NYAMBURA MBURU (Terry)**, on 6<sup>th</sup> July, 2021 was convicted of the murder of **ZACHARY NDWIGA NJAGI** (deceased).
2. On 23rd December, 2014, Terry and the deceased went out for merry making at a club called **Porkies** in Thika town. Both Terry and the deceased resided at Runda Estate Thika. The deceased lived on the 4<sup>th</sup> floor of the apartment while Terry lived on 2<sup>nd</sup> floor. When the Porkies Club closed in the early hours of 24<sup>th</sup> December, 2014, Terry and the deceased were given a lift to their residence.
3. The prosecution's case, which was upheld by this Court, was that Terry stabbed the deceased on the left between the 3<sup>rd</sup> and 4<sup>th</sup> ribs which resulted in the death of the deceased. This stabbing occurred in Terry's apartment. Terry's defences of provocation and self-defence were rejected by the court.
4. The prosecution confirmed that Terry was a first offender.
5. Terry requested and was granted permission to personally address the court in mitigation. She stated she was remorseful and contrite of the offence. She regretted having committed the offence and prayed for forgiveness and leniency.
6. Terry further stated that while in remand she underwent counselling which has resulted in positive change. She also has undergone rehabilitation which has taught her to be a responsible person. Her wish is that if she is given an opportunity to serve noncustodial sentence, she would take the opportunity to share with other youths and counsel them against drug taking and on living positively and on how to be law abiding citizens.
7. Terry said she is 32 years old and recently married. She was blessed with a baby girl who passed away on 9<sup>th</sup> July, 2021 while in custody awaiting her sentence.
8. Terry stated that her elderly parents are both facing medical challenges. That her father is suffering terminal cancer and her mother is suffering with high blood pressure. Terry informed the court that since losing her sibling last year, she is the only available child of her parents who can take care of them.
9. Terry also stated that she has poor health having not recuperated after giving birth and also that she has ulcers and is suffering with severe back pain and migraine.
10. I have considered the probation pre-sentencing report which report is in line with the submissions made by Terry; only that, that probation report reveals that Terry has another sibling called *Pascalina Njoki*. That revelation was contrary to what Terry stated in her mitigation.
11. The court was also presented with the victim impact report. The same was compiled after interview of the mother and father of the deceased. The impact of the offence committed by Terry on deceased's parent seem to have been immense. Deceased's father stated that he lost his only son with whom he had a close relationship. He is still bitter and sad at that loss. The deceased mother said that the death of her only son crashed her almost leading to her own death. She said that her deceased son was of great financial and physical assistance to both his parents. Deceased's mother gave further information to the interviewer which was recorded as follows:-

*“She indicates that she had a close relationship with her son, the deceased. Her son’s death crashed her to a point of her own near death because the deceased was their only son whom they looked up to. That their son was very good to them and was always there for them because he always created time for them whenever they planned a trip. She is at a loss as the deceased was of great assistance to them financially. To her, Christmas is never the same as every year, their son would be part of the celebrations at home. His death having occurred a day before Christmas, it shattered the plans they had for Christmas for the year 2014 and no other Christmas has meaning to them as a family. Instead of celebrating the joy of Christmas, it rekindles in them the sadness of their son’s death.”*

## ANALYSIS

12. The objective of sentencing as set out in the Kenya Judiciary Sentencing Policy guidelines is for retribution, deterrence, rehabilitation, restorative justice, community protection and denunciation. In sentencing the court should consider both aggravating and mitigating factors. The court must consider what sentence does, the seriousness of the offence and whether the sentence can be reduced in the light of mitigating factors.

13. The Supreme Court in the case **FRANCIS KARIOIKO MURUATETU & ANOTHER VS. REPUBLIC (2017) eKLR** emphasised the need to obtain mitigation before sentencing. Their lordship stated thus:-

*“[42] Pursuant to Sections 216 and 329 of the Criminal Procedure Code, Chapter 75, Laws of Kenya, mitigation is a part of the trial process. Section 216 provides:*

*The Court may, before passing sentence or making an order against an accused person under section 215 receive such evidence as it thinks fit in order to inform itself as to the sentence or order to be passed or made.*

*Section 329 of the Criminal Procedure Code provides:*

*The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed.*

*[43] Therefore, from a reading of these Sections, it is without doubt that the Court ought to take into account the evidence, the nature of the offence and the circumstances of the case in order to arrive at an appropriate sentence. It is not lost on us that these provisions are couched in permissive terms. However, the Court of Appeal has consistently reiterated on the need for noting down mitigating factors. Not only because they might affect the sentence but also for futuristic endeavors such as when the appeal is placed before another body for clemency.”*

14. I have considered Terry’s mitigation and the victim’s impact report. In this Court’s view, Terry was reckless in stabbing the deceased and that recklessness resulted in the loss of the life of the deceased. In sentencing of Terry, this Court will seek to achieve retributive justice. That is the sentence of this Court will seek to punish Terry, in a just manner, for her criminal conduct. The term retribution was considered in a Canadian case, that is, **R. VS. F.S.A. 1996 CanLII 10270 (NBCA)** thus:-

*“Indeed, it is my profound belief that retribution represents an important unifying principle of our penal law by offering an essential conceptual link between the attribution of criminal liability and the imposition of criminal sanctions ...*

*Retribution in a criminal context, by contrast, represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more.”*

15. Terry recklessly used a knife to stab the deceased, the only son of his parent. It is also important to note that the deceased was a father to a boy but the contact with the deceased parents with that boy and his mother were discontinued after the death of the deceased.

16. I have taken into account that Terry has had bouts of depression and has been undergoing counselling. Terry has previously abused alcohol.

17. Bearing all the above in mind, I find the fitting sentence for **Terry Teresia Roseline Nyambura Mburu** to be 7 years imprisonment. In pronouncing that sentence, I wish to convey to Terry the words stated in the case **REPUBLIC VS. PETER LEKUPE (2017) eKLR** where the court stated:-

*“... **PUBLIC PROSECUTOR V RAPRAP [2011] VUSC 89** where His Lordship Spear J. said:-*

*This sentence must hold you fully accountable for what you have done; it must denounce your conduct and promote in you a sense of responsibility for your activities ...”*

## CONCLUSION

18. **TERRY TERESIA ROSELINE NYAMBURA MBURU** is hereby sentenced to serve 7 years imprisonment but credit for the period

spent in custody of 8 months shall be given on that sentence.

19. Orders accordingly.

**RULING DATED AND DELIVERED AT KIAMBU THIS 18TH DAY OF NOVEMBER, 2021.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant: Maurice

For DPP: Mr. Kasyoka

Accused **TERRY TERESIA ROSELINE NYAMBURA MBURU**: Present

For Accused: Ms. Njoroge holding brief Mr. Mbiyu Kamau

**COURT**

RULING on sentencing delivered virtually.

**MARY KASANGO**

**JUDGE**