



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL CASE NUMBER 23 OF 2018**

**REPUBLIC.....ODPP**

**VERSUS**

**MN.....ACCUSED**

**RULING - (SENTENCE)**

1. MN was charged with **Murder Contrary to Section 203 as read with 204 of the Penal Code**. It was alleged that on 8<sup>th</sup> May 2018 in Gilgil Sub County within Nakuru County she murdered Loise Njoki Mutero.
2. When plea was first taken on 18<sup>th</sup> May 2018, she pleaded guilty. The court however entered a plea of not guilty because it was suggested that she suffered from mental illness. She was represented by Ms Tarus.
3. On 22<sup>nd</sup> May 2018, Ms Kipruto took over the defence and requested for a second mental assessment by Dr. Feksi. The report dated 28<sup>th</sup> August, 2018 confirmed that the accused was fit to stand trial. However the record shows that on 20<sup>th</sup> June 2018, there was an order for the accused to be escorted to Mathari Hospital for assessment and treatment.
4. On 23<sup>rd</sup> January 2019, there was a certificate from Mathari Hospital, Dr. Syengo, that the accused was fit to stand trial. She was admitted to bail on condition that the family would ensure she took her medication.
5. I took over the matter on 9<sup>th</sup> October 2019 and was told that the accused was still on treatment. There was a fresh Mental Assessment Report dated 4<sup>th</sup> October 2019 which showed that she was fit to stand trial. I took plea, a fresh and she denied the charge.
6. The defence proposed a plea bargain agreement and on 23<sup>rd</sup> June, 2021 the prosecution substituted the charge of **Murder Contrary to Section 203 as read with Section 204 of the Penal Code with Manslaughter Contrary to Section 202 as read with 205 of the same code**. The accused person pleaded guilty to the charge.
7. The accused person suffered from episodes of mental illness and on the material date she was found by a child hitting something on the ground. The child, fearful did not go close but he heard screams and went to call for help. People came only to find that she had killed the deceased. They locked her up in the house and called the police who came and took her to the police station.
8. A post mortem was conducted on the body and she was charged with this offence.
9. The prosecution recommends three (3) years imprisonment against the defence's proposal for a *nolle prosequi*.
10. In mitigation the accused told the court that she was very remorseful, because at that time she was mentally unstable as can be seen from the medical records.
11. That at the time she committed the offence she was sixty seven (67) years old but is now seventy one (71) years old and prison would not be suitable. That she spent some nine (9) months in custody before she was released on bond and was now fully recovered. That the two (2) families had reconciled.
12. At the time of the plea agreement, the parents and husband of the deceased were present in court to show that they were in reconciliation.
13. Having heard the mitigation, I ordered for a Probation Officer's Report. It was filed on 28<sup>th</sup> July 2021 and recommended a non-custodial

sentence. It is noteworthy however that the Probation Officer did not read the file as the report is based on the charge of **Murder Contrary to Section 203 as read with 204 of the Penal Code**. There is no mention of the Plea Agreement whereby the accused person pleaded to the lesser charge of Manslaughter.

14. That besides it is evident that the family of the victim have come to terms with the death of their family member and the two families have reconciled and live in harmony. The accused is seventy - one (71) years old, not a danger to herself or society as she is on treatment.

15. I have carefully considered the circumstances of the offence, the recommendations by the state and the family, and the recommendations in the Probation Officer's Report. I have considered the age of the accused person, and the fact that the community do not consider her a danger.

16. It is therefore my view that a non-custodial sentence would suffice the circumstances.

17. The accused person is sentenced to serve three (3) years on probation supervision. During this period, she must continue to take her medicine, and attend the requisite follow up clinics, and to abide by any other directions given by the Probation Officer.

18. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF NOVEMBER, 2021.**

**MUMBUA T. MATHEKA**

**JUDGE**

**In the presence of:**

Edna Court Assistant

For state: Ms Murunga

For accused: Ms. Kipruto

Accused present

Probation Officer: Mr. Salim