



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CRIMINAL (MANSLAUGHTER) CASE NO. 21 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JULIANA WANZA MULEI.....ACCUSED**

**SENTENCE**

1. **JULIANA WANZA MULEI** pleaded **GUILTY** to the offence of manslaughter and was convicted accordingly. The accused had been initially charged with murder contrary to section 203 as read with 204 of the Penal Code which was later reduced to manslaughter upon a plea bargain agreement. The court convicted the accused on her own plea of guilty to the offence of manslaughter on a charge prepared following the acceptance by the court of the plea agreement pursuant to section 137H of the Criminal Procedure Code (CPC), upon being satisfied of the factual basis of the plea agreement and that the accused was at the time of the agreement competent, of sound mind and had acted voluntarily in terms of section 137G of the CPC.

2. **JULIANA WANZA MULEI** in terms of Section 202 as read with Section 205 of the Penal Code upon being convicted is subject to serve life imprisonment.

3. The prosecution is represented by Mr Machogu, whereas the convict is represented by Mr Mukula. In his submissions on sentencing, Mr Machogu submitted that the convict is a first offender.

4. Counsel for the convict prayed for a discharge order or a non-custodial sentence on the grounds that she is a mother of four children who depend on her. It was counsel's submission that the convict is remorseful and apologetic for the unfortunate turn of events. The convict however chose not to say anything in her allocutus following her conviction.

5. On record is a presentence report dated 12.11.2019 that indicated that the deceased had earlier cited fear for his life since it was alleged that the convict was threatening him. It was reported that financial constraints and alcoholism caused frequent fights between the two. Her family had a positive attitude towards her and indicated willingness to assist her resettle. It was reported that the convict had no criminal record.

6. The offence of manslaughter is punishable by the maximum penalty of life imprisonment under section 205 of the Penal Code. However, this represents the maximum sentence which is usually reserved for the worst of such cases. I do not consider this to be a case falling in the category of the most extreme cases of manslaughter. It has been indicated by the state that the accused is a first offender. I have for that reason discounted life imprisonment.

7. The Judiciary Sentencing policy guidelines are silent on the path to take in manslaughter cases hence the starting point in the determination of a custodial sentence for offences of manslaughter would be case law. In **V M K v Republic [2015] eKLR**, 10 years imprisonment was given for manslaughter. Courts are inclined to impose life imprisonment where a deadly weapon was used in committing the offence. In this case, there is no evidence that the convict used such a weapon. I have noted that the convict pleaded guilty and where a judge takes a plea of guilty into account, it is important that the convict says he or she has done so (**see R v Fearon [1996] 2 Cr. App. R (S) 25 CA**). In this case therefore I have taken into account the fact that the convict readily pleaded guilty, as one of the factors mitigating her sentence. Further, the English practice of a reduction of one third has been held to be an appropriate discount (**see: R v Buffrey (1993) 14 Cr App R (S) 511** where the Court of Appeal in England indicated that while there was no absolute rule as to what the discount should be, as general guidance the court believed that something of the order of one-third would be an appropriate discount. In light of the convict's plea of guilty, and persuaded by the English practice, because the convict before me pleaded guilty, I propose at this point to exclude the sentence of life imprisonment and I shall consider to reduce the sentence by one third from the starting point of ten years to a period of two years' imprisonment. I find a sentence of two years imprisonment to be reasonable in the circumstances.

8. In the case of **Republic v Daniel Okello Rapuch [2017] eKLR**, a sentence of 12 months imprisonment was meted out on a man who killed another on the allegation of being involved in an illicit love affair with his girlfriend. In **Republic v Ismail Hussein Ibrahim [2018] eKLR**, the court acquitted the accused in lieu of having him charged of a lesser offence of manslaughter for he was acting in self defence. The facts herein revealed that the accused and deceased had some tumultuous relationship laced with frequent fights and that on the material date the deceased had attacked the accused who retaliated in self defence but unfortunately the deceased succumbed to the injuries. In light of aggravating factors, I have adopted a starting point of two years' imprisonment. I am alive to the fact that the circumstances herein appear to have turned tragic to the two love birds which was rather unfortunate. Both the deceased and the deceased had come from a drinking spree and were expected to retire for the night as most couples often do but kicked off a fight that led to the demise of the accused's companion. The presentence report appears favorable.

9. I have considered the fact that the convict is a first offender, a relatively young lady at the age of 35 years when she committed the offence. In that regard the period of two years' imprisonment is justified in light of the mitigating factors. In accordance with Section 333(2) of the Criminal Procedure Code, to the effect that the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. I observe that the convict was charged on 18.9.2017 and has been in custody since

then. I hereby take into account and set off a period of two years as the period the convict has already spent in remand. I therefore find that she has served her sentence and direct that she be set at liberty forthwith unless otherwise lawfully held.

It is so ordered.

**Dated and delivered at Machakos this 16<sup>th</sup> day of January, 2020.**

**D. K. Kemei**

**Judge**