



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

CRIMINAL CASE NO. 10 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

PATRICK MACHIO BARASA.....ACCUSED

SENTENCING

1. Patrick Machio Barasa, the accused, was initially charged with the offence of murder contrary to section 203, as read with Section 204, of the Penal Code. Particulars were that on the 7th day of April, 2019 at Greencastle area in Ongata Rongai Township, Kajiado North Sub-County within Kajiado County, he murdered Ruth Lianda Imbwaga.
2. The accused pleaded not guilty to the offence. He thereafter he entered into a plea bargain negotiations with the Prosecution which is allowed under Section 137A of the Criminal Procedure Code and reached an agreement to plead to a lesser charge.
3. The court explained to the accused his rights under the plea bargain, perused the agreement and on being satisfied that the accused was entering into the agreement voluntarily, allowed the plea bargain agreement and the accused pleaded guilty to a lesser charge of manslaughter, he was convicted on his own plea of guilty and, therefore, this sentencing.
4. Mr. Nairi, learned counsel for the accused, submitted in mitigation, that the accused is a first offender, aged 34 years and is the sole breadwinner of his young family. According to counsel, the deceased was the accused's wife and they had 2 children aged 6 and 3 years respectively. The accused committed the offence unintentionally as he was only disciplining his wife who had spent the money meant for food to drink.
5. He submitted that the accused reported the matter to the area Chief to help mediate and when the chief sent for the wife, she refused to go. He pleaded for leniency and urged the court to consider a non-custodial sentence to enable the accused take care of their young children who are now left without a parent.
6. Mr. Njeru Learned Assistant Deputy Prosecution Counsel, submitted in response to Mr. Nairi mitigation, that despite the fact that the deceased died out of a family quarrel due to her drunkenness, the court should nonetheless impose a custodial sentence.
7. According to Mr. Njeru, the probation report shows that the home environment is not conducive for the accused's rehabilitation and for that reason; the non-custodial sentence may not be the appropriate sentence to met out.
8. I have considered the mitigation and the circumstances of this case. The accused gave the deceased money to buy food for the family, but she used the money to drink. This infuriated the accused who sought to know why she had used the money to drink instead of buying food. A quarrel ensued leading to the accused beating the deceased using a stick.
9. The fight attracted members of the public and the matter was reported to the area Assistant Chief who took the accused to his office to try and have the issue sorted out. The Chief sent the accused to call his wife but the wife was unable to walk. He left her in the house and went away. Later the deceased's sister went to their house and found the deceased's lifeless body on a mattress on the floor. The police were informed and she arranged to have the body taken to city mortuary with the assistance of the police
10. Taking into account the facts of this case and the circumstances that led to the death of the deceased, it is clear that the deceased's death was a result of a family dispute that was not meditated. The accused was disappointed by the deceased's behavior. He quarreled with her, had a fight but this resulted in to the death.
11. The accused also made effort to report the matter to the Assistant Chief for assistance but it was too late as the deceased could not make it

to the Assistant Chief's office.

12. The fact of the matter remains that a life was lost but in very unfortunate circumstances. From the facts of this case, the accused did not intend to harm the deceased. He cannot however be excused for using relatively excessive force when he continuously beat the deceased with a stick not minding the fact that it would cause her serious injuries. For this he should account.

13. It has been submitted that the accused is the sole breadwinner to the family and more so the two children who are now left without a mother and the father is in remand.

14. In determining the sentence to impose against an accused, the court should consider the **moral blameworthiness of the offender**. See ***Omuse v Republic*** (2009) KLR 214. That is, the sentence to be imposed on the accused must, as much as possible, reflect the fact that the accused would appear to have used excessive force in "punishing" the deceased who was drunk and could not run away or defend herself.

15. In my view, by using the stick to continuously hit the deceased, the accused knew or ought to have known that it could inflict fatal injuries on her. The accused is wholly to blame for the death of the deceased, which in the circumstances of this case need not have resulted from the alleged misuse of domestic money meant to purchase food. The accused overreacted and as a result it led to the deceased's death her drunkenness notwithstanding. This calls for a custodial sentence.

16. Taking into account all the circumstances of this case, this Court considers a sentence of imprisonment for five years appropriate. In arriving at the sentence to met out, the Court is required to take into account the period that an accused has been in custody before sentence in accordance with the Proviso to section 333 (2) of the Criminal Procedure Code which states that:

"(2) Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody. (emphasis)

17. The court takes note of the fact that the accused was first produced in court on 21st February 2019, which means he has been in custody for nearly one year. Consequently, the accused is hereby sentenced to five years imprisonment. The sentence to run from 21st February 2019.

Dated, signed and delivered at Kajiado this 7th day of February 2020.

E C MWITA

JUDGE