



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

CRIMINAL CASE NO. 23 OF 2019

REPUBLIC.....PROSECUTION

VERSUS

ERIC KITUTO EDWARD.....ACCUSED

CORAM: Hon. Justice R. Nyakundi

Ms. Sombo for the state

Ms. Aoko for the accused persons

SENTENCE

The accused was charged with the offence of murder as defined in terms of Section 203 as read with Section 204 of the Penal Code Chapter 63 of Laws of Kenya. The particulars of the offence were that the accused murdered **Sheila Wavinya David Edward Mutune** on the 5th day of November, 2019 at Kasovo area Malindi Sub-county within Kilifi County. The accused was the deceased's employer. The accused pleaded guilty to a lesser offence of manslaughter vide plea bargaining agreement.

He assaulted the deceased. She was rushed to the hospital by good Samaritans where she later succumbed to the injuries. A postmortem was performed on the 7th November 2019 which concluded that the deceased died due to severe head injury with hemorrhage shock.

Manslaughter is indeed a serious offence. The accused killed a human being. Having done so, he deserves to be punished. The effect of punishment is an intentional infliction suffering on the offender and an expression of society's disapproval of the offender. In doing so those who are charged with the imposition of punishment ought to in my view weigh the consequential harm on the offender against the society's expectations.

In assessing an appropriate sentence, this court shall not lose sight of the fact that the fundamental policy of sentencing is that sentence should be proportionate to the crime. In **S V Sparks 1972 (3) SA 396 (A) 410H Holmes J** stated:

“Punishment should fit the criminal as well as the crime be fair to the state and the accused and be blended with a measure of mercy.”

Further, this court shall carefully balance the interests of the accused against considerations of the sanctity of human life. The sentence imposed on an accused should be shaped and determined by the following factors among others:

(i). The degree of premeditation by the offender,

(ii). The circumstances surrounding the conviction of the accused,

(iii). The gravity of the offence committed, in some instances in regard to which the maximum punishment provided by statute is an indication,

(iv). The attitude of the offender after the commission of the crime, as this serves to indicate the degree of criminality involved and throws some light on the character of the accused, the previous criminal record; if any, of the offender,

(v). The age, mode of life, climate and personality of the offender,

(vi) Any recommendation presented to court such as a presentencing report from an official designated to assist in assessing the accused and

(vii). Case authorities in relation to similar offences.

In sentencing the accused herein, the court shall have regard to the fact that on the material date, the accused and the deceased were involved in a disagreement which culminated into a fight. The accused took a big hammer and they struggled until he overpowered the deceased and proceeded to hit her on the head.

In general, women suffer extreme levels of violence, emotional and physical abuse in our society. Disputes between human beings, by nature, are inevitable, but use of excessive force to cause death or to do grievous harm is an aggravating factor. The mitigation features which diminishes the gravity and are favourable to the accused from my perspective are:

(i). No prior conviction.

(ii). Good prospects of rehabilitation.

(iii). He is remorseful as can be deduced from his plea agreement.

One of the exception for this offence is a factor that the accused was the initiator of the conflict. The accused engaged in disagreement or fight with the deceased but he, unfortunately, decided to take matters into his own hands. It is regrettable that a life was needlessly lost. The court does not condone the use of violence in any shape or form.

Having considered this case, it is my considered view that there are more aggravating features than mitigation factors for a lesser custodial sentence to be passed against the accused. This will result for the convict to be sentenced to twelve (12) years imprisonment.

14 days right of appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 14TH DAY OF APRIL 2020

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R. NYAKUNDI

JUDGE