



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIVASHA**

**CORAM: R. MWONGO, J**

**HIGH COURT CRIMINAL CASE NO. 18 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOHN GITHENYE KAMAU.....ACCUSED**

**JUDGMENT ON SENTENCING**

1. The accused was charged with the offence of murder contrary to **section 203** as read with **section 204** of the **Penal Code**. The particulars of the offence were that on the 1<sup>st</sup> day of October, 2017, at an unknown time at central Ndabibi village, in Naivasha sub-county within Nakuru County, he murdered Teresia Njoki Nganga. On arraignment, the accused pleaded not guilty. The prosecution called 4 witnesses, and the accused gave sworn testimony.
2. The deceased's body was found dead under the bed in the accused's premises, which was locked from the outside. There was evidence that the accused and deceased were either living as husband and wife or that they were at any rate staying together, and was most probably the last person in contact with the deceased prior to her death. In any event, he was the one who opened the premises where the body was found when a group of members of the public came to search for the deceased in that premises and found her body. The postmortem found that the deceased death had been caused by manual strangulation resulting in asphyxia following cord pressure to the neck.
3. The court found the accused circumstantially guilty of manslaughter in its judgment delivered on 3<sup>rd</sup> December, 2019. The sentence hearing was held 21st January, 2020, upon a probation report being availed to the parties and the court.
4. Counsel for the accused in mitigation submitted that the accused was a young man with a nine-year old child and family.; that he was serving the community as a pastor; that he was remorseful for what had happened and seeks leniency from the court. Counsel stated that the accused was a first offender; and that based on the positive report of the probation officer, the accused should be given a non-custodial sentence.
5. Further, Counsel submitted that the accused had been in custody since his arrest in October, 2017; that he had been beaten and brutalized by the mob that came to arrest him, and he had had to be hospitalized for a long time and he still suffers from the consequences of the mob injustice. Thus, if granted a non- custodial sentence as prayed, the accused would relocate to Nakuru where he would stay with his maternal grandmother and auntie, who were willing to accommodate him.
6. I have considered the mitigation submitted by counsel. I have also carefully read and taken into account the Probation Officer's Report filed on 18<sup>th</sup> December, 2019.
7. The report gives the personal profile details of the accused, who is the first born in a family of eleven. He was born in 1958 and would therefore be 62 years old, although the same report states that he is aged 41 years. .
8. From his background, he was a tailor and his relationship with the deceased was confirmed as he was living with her and they were business partners. He had separated from his former wife with whom he had children who live in the Moi Ndabi area. He was also a local pastor and in good mental health.
9. The local administration, namely the chief of Moi Ndabi, said that the accused's security cannot be guaranteed, as there was mistrust and tension. The family and community, too, were still in shock, and found it difficult to trust him given what had transpired.

10. The victim's family, according to the report, were still bitter with the accused and would be uncomfortable living with the accused. Despite all this the accused insists that he did not commit the offence

11. The report confirms that although the accused is a first offender, releasing him on a non-custodial sentence would endanger him if he returns to his village. In addition the victim's family, who live in the same area, felt that the children would be psychologically tortured to have the accused in the same village.

12. In its conclusion, the report recommends that:

***“[a] non-custodial sentence is not suitable for him and that if at all the non-custodial sentence is granted, he should consider re-locating to a safer place until the matter is fully lapsed from the communities' memory”***

13. Taking into account that the deceased was killed by strangulation, and that the accused did not admit having taken her life despite her being found dead in his room, which he had locked, I am hesitant to grant a non-custodial sentence.

#### **Disposition**

14. I agree with the probation officer's conclusion, that the accused ought not be released on a non-custodial sentence. He may be subjected to harm by the villagers or he may be attacked by victim's family members.

15. In the circumstances, I sentence the accused to imprisonment for seven (7) years commencing from the date of his arrest and incarceration on the following conditions:

a) The Prisons Service shall maintain a detailed record of the accused's life and conduct whilst in prison which shall be availed to the court after the lapse of his first forty-two (42) months of incarceration, to determine whether the sentence shall be reviewed.

b) If the accused is involved in any criminal activities whilst serving sentence, the review mentioned in a) above shall be revoked.

16. Orders accordingly

#### **Administrative directions**

1. Due to the current inhibitions on movement nationally, and in keeping with social distancing requirements decreed by the state due to the Corona-virus pandemic, this Judgment has been rendered through Zoom video/tele-conference with the consent of the parties noted hereunder, who were also able to participate in the conference. Accordingly, a signed copy of this judgment shall be scanned and availed to the parties and relevant authorities as evidence of the delivery thereof, with the High Court seal duly affixed thereon by the Executive Officer, Naivasha.

2. A printout of the parties' written consent to the delivery of this judgment shall be retained as part of the record of the Court.

3. Orders accordingly.

**Dated and Delivered in Nairobi by teleconference this 9<sup>th</sup> Day of April, 2020**

***Signed***

**RICHARD MWONGO**

**JUDGE**

Attendance list at Zoom Video/teleconference:

1. Mr Gachiengo Gitau for the Accused

2. Mr John Githenye Kamau, the Accused

3. Ms Langat for the ODPP,

4. Court Clerk – Quinter Ogutu