



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NUMBER 7 OF 2017

REPUBLIC.....PROSECUTOR

=VERSUS=

LEONARD CHERUIYOT KIPNGETICHACCUSED

J U D G M E N T

1. The accused person **Leonard Cheruiyot Kipng'etich** was charged with **Murder Contrary to Section 203 as read with 204 of the Penal Code**. It was alleged that on 9th January 2017 at Seguton Area in Kuresoi Sub County within Nakuru County he murdered **Lily Cheruiyot Chepng'etich** alias **Beatrice Chepng'etich**.
2. The accused pleaded not guilty to the charge.
3. On 17th October, 2019 the Office of the Director Public Prosecutions (ODPP) and the accused enter into a plea bargain agreement. The accused would plea to the lesser charge of Manslaughter contrary to section 202 as read with 205 of the Penal Code.
4. In the Plea Bargain Agreement the state would propose seven (7) years imprisonment, and the accused two (2) years' probation supervision.
5. On 11th November, 2019 the new charge of **Manslaughter Contrary to Section 202 as read with 205 of the Penal Code** was read to the accused. The particulars were given by the prosecuting counsel that on 9th January 2017 at Seguton area, Kuresoi Sub County within Nakuru County murdered (sic) Lily Cheruiyot Chepng'etich alias Beatrice Chepng'etich. He pleaded guilty.
6. The facts presented were that on 9th January, 2017 the deceased who was the wife to the accused had gone to her parents' home and came back. She found the accused person. A quarrel erupted in the course of which the accused picked a hoe and hit her. He also hit her with a panga. He caused her fatal injuries. In realization of what he had done he attempted to commit suicide. He was not successful. He then proceeded to Keringet Police Station where he surrendered himself and was charged with murder. He pleaded guilty to the facts.
7. He was convicted accordingly.
8. Before sentencing and accordance with **Section 137 (1) as read with Section 216 of the Criminal Procedure Code** I invited the parties to address the court.
9. The prosecution submitted that he was a first offender.
10. 19th December, 2019, Ms. Ogange for the accused submitted that there was provocation and accused had acted in self defence; that he had acted in error of judgment and was remorseful. He had pleaded guilty at the earliest opportunity and had cooperated with the police. In addition he had two (2) children aged five (5) and twelve (12) years and was now the sole bread winner, and it was in their best interests that he be released. He was sickly and required medical treatment. He was seeking a lenient sentence to enable him seek medical care and also care for his children.
11. I sought a pre-sentence report which was filed on 30th January, 2020 by the Probation officer E. Kwamboka.
12. The state opposed any non-custodial sentence asking the court to consider the aggravating circumstances of the offence and the age of the deceased at thirty three (33) at the time of death and had it been their choice he would get the ultimate sentence. It has been said he is sickly, but no evidence of that was placed before court.

13. Ms. Ogange urged the court to consider the mitigation on 19th February 2019.

14. I have carefully considered the facts of this case, the mitigation by the accused, the submissions of the prosecution and the contents of the pre-sentence report. A killing occurred. A man brutally killed his wife using a jembe and a panga, out of domestic quarrel. The man, the accused killed the mother of his children and left three children motherless. To his credit, he realized he had wrong and surrendered himself to the authorities and he is remorseful. However the circumstances of the case demonstrate that the accused has an anger that turned murderous on the material date. He needs time to deal with that. The secondary victims, his children and his wife's mother and family have not come to terms with what happened.

15. Looking at the circumstances of the offence, and the Sentencing Policy Guidelines, the court must of necessity weigh the aggravating circumstances against the mitigating circumstances. **Section 205 of the Penal Code** provides that a person found guilty of Manslaughter is liable to imprisonment for life. The state proposes seven (7) years imprisonment, the accused two (2) years' Probation Supervision.

16. In the case of **Julius Lopeyok Wero v Republic [1983] eKLR** the Court of Appeal upheld a sentence of eight (8) years where the appellant had pleaded guilty to Manslaughter.

17. The accused has been in custody since 11th January 2017. That makes three years already.

18. Taking into consideration the period already served, the aggravating and mitigating circumstance he is sentenced to five (5) years imprisonment with effect from the date of his 1st Judgment.

19. Right of appeal on sentence within 14 days.

Dated, delivered and signed at Nakuru this 9th day of April, 2020.

Mumbua T. Matheka

Judge

In the presence of: Via Zoom

Edna Court Assistant

Ms. Ogange for accused

Ms. Mburu for the state

Accused Present