



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL CASE NO. 7 OF 2015**

**REPUBLIC.....STATE**

**VERSUS**

**BENARD LEMARA.....ACCUSED**

**SENTENCE RULING**

1. The Accused Person, Bernard Lemara, was convicted of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code in a judgment dated 23/04/2020. The conviction was for murdering his former lover, Naomi Cherutich ("Deceased") on the 12th day of November, 2014 at Mutende Trading Center in Njoro Sub County within Nakuru County.

2. The circumstantial evidence adduced at the trial reveals that the Accused Person fatally stabbed the Deceased following a domestic quarrel. Several witnesses testified that the relationship between the Accused Person and the Deceased was, in fact, a loving relationship and it was not clear what had happened that day. The Accused Person insisted that the Deceased had stabbed herself on the thigh because she suspected that the Accused Person wanted to leave her. This theory was discounted as implausible in the judgment.

3. During the sentence hearing, the Prosecution told the Court that the Accused Person was a first offender and that there were no aggravating factors in the case. The Deceased had no known relatives as her only known relative, the mother, was now deceased also. Efforts to trace her cousin who testified (and identified herself as a sister) in the case were not fruitful.

4. In mitigation, Mr. Mugambi informed the Court that the Accused Person was remorseful; and that he deeply regretted what happened on that day. He asked the Court to consider a non-custodial sentence since the Accused Person was a family man with three children in Standard 4, 2 and one who is not yet school-going. He posited that the circumstances do not call for the death sentence; and that, indeed, a non-custodial sentence would be sufficient.

5. The Accused Person, also, addressed the Court. He enunciated his remorse for what happened to his lover on the fateful night she died. He begged the Court to consider non-custodial sentence in the case noting that he is the sole bread winner both for his own family as well as his mother who is 84 years old.

6. This is, no doubt, a sad case. I formed the opinion that the Accused Person's remorse was sincere. It is still unclear what happened on the fateful night the Deceased died but what is clear is that both the Accused Person and the Deceased were drunk at the time. It is also clear that the two were lovers and there was evidence that their relationship was a loving and peaceful one. Hence, although there was a technical finding of premeditation in the case, this is hardly a case of depraved or cold hearted murder of the kind that should attract the heaviest punishment namely death penalty. As the Prosecution conceded, there are no aggravating circumstances. Perhaps had the Accused Person been more forthcoming in his defence the verdict would likely have been one of manslaughter.

7. All considered and given the circumstances in which the offence was committed, and the mitigating circumstances outlined above, my view is that a long prison sentence will not serve a very useful purpose in this instance.

8. In the specific circumstances of this case, I have formed the opinion that a custodial sentence of seven (7) years followed by a probationary sentence of three (3) years will be sufficient sentence for this crime. The custodial sentence will begin running from 29/07/2016 since the Accused Person has been in custody since that time. The probationary period will follow immediately after he is released from Prison.

9. Orders accordingly.

**Dated and delivered at Nakuru this 14<sup>th</sup> day of May, 2020**

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**JOEL NGUGI**

## JUDGE

**NOTE:** This judgment was delivered by Video-conference facility pursuant to the various Directives by the Honourable Chief Justice asking Courts to consider use of technology to deliver judgments and rulings where expedient due to the Corona Virus Pandemic. This resulted in Administrative Directives dated 01/04/2020 by the Presiding Judge, Nakuru Law Courts authorizing the delivery of judgment by video-conferencing. This avoided the need for the participants to be in the same Court room for the delivery of the judgment. The Appellant attended by video-conference from Prison while the Prosecutor, Ms. Verne Odero, and the Court Assistant were in attendance by video-conference set up at the Court's Boardroom. Representatives of the media and select members of the public were able to access the proceedings by watching at the Court's Boardroom. Accordingly, the proceedings met the constitutional requirement of public hearing.