



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 14 OF 2017

REPUBLIC.....STATE

VERSUS

EVERLINE CHEROP KIPLEMOI.....ACCUSED

SENTENCE RULING

1. The Accused Person, Everline Cherop Kiplemoi, was convicted of the murder of her husband, Peter Kiplemoi Kiptoo (“Deceased”) contrary to Section 203 as read together with Section 204 of the Penal Code in a judgment dated 30/04/2020.
2. The particulars which the Court accepted as established beyond reasonable doubt were that the Accused Person attacked the Deceased, who was drunk at the time, using a stool and a piece of wood – assaulting him so severely that the pathologist found that the Deceased’s body had multiple cut wounds on the hands and legs. It also had a fractured left mid-shaft radius and ulnar as well as the left elbow and right distal radius and ulnar. The head had a deep cut wound. The left lung had collapsed and he also had fractured his 6th and 8th left ribs. The head had also had an occipital skull fracture. The doctor concluded that the cause of death was severe head injury and blunt chest trauma due to massive blunt force trauma secondary to an assault.
3. Evidence adduced at the trial established that the cause of the disagreement was money. Apparently, the Deceased had sold some potatoes belonging to the Accused Person and used the money to buy alcohol. This enraged the Accused Person. Evidence also established that the two had a history of physical fights but it had never degenerated to the level it did that day.
4. For the sentence hearing, the Prosecution filed a Victim Impact Statement and urged the Court to impose a severe custodial sentence. The Victim Impact Statement showed that the victim’s family – especially his children by another wife – are sorely bereaved of their father. They consider the Accused Person an unapologetic and un-remorseful murderer who has refused to ask for forgiveness or reconciliation. They insist that their sense of justice will only be assuaged by a long custodial sentence.
5. On the other hand, the Accused Person, both in her direct address to the Court and through her counsel, Ms. Ayuma, pleaded for leniency and, if possible, non-custodial sentence. The Accused Person insisted that she did not intend to kill the Deceased and that she only acted in self-defence because the Deceased attacked her first. She begged the Court to be permitted to go and take care of her seven children who are now with her aging parents. She said she was remorseful and deeply regretted her actions. Ms. Ayuma struck the same chord: that the Accused Person was very remorseful and that she has had a chance to reflect on her actions now and realized that she could have acted differently. She also pointed out that the Accused Person is a first offender.
6. I have carefully considered all the factors individualized basis as I am required to do. following five mitigating factors. in his case on an I have considered the
 - a. *First*, the Accused Person the Accused Person is a first offender.
 - b. *Second*, the Accused Person expressed remorse and asked for forgiveness – although it is important to point out that she had not taken any positive steps to ask for forgiveness from the family of the Deceased.
 - c. *Third*, I have also considered the circumstances in which the offence was committed as a mitigating circumstance. While the Court has found categorically that there was pre-meditated action on the part of the Accused Person in causing the death of the Deceased, it is also true that the Deceased was drunk at the time of the commission of the offence and that there was a history of physical abuse on both sides.
 - d. *Fourth*, the commission of the offence here does not betray a depraved heart or the use of gratuitous, excessive or planned

violence. While unfortunate, the circumstances show the spectacular explosion of rage that had been simmering for a number of years.

e. *Fifth*, the family situation of the Accused Person is a mitigating factor. She has seven children left; and their father is now deceased.

7. These mitigating factors must be balanced with aggravating circumstances to arrive at an appropriate sentence. The multiple injuries to the body of the Deceased is certainly an aggravating circumstance as is the fact that the Accused Person has not taken any positive steps to seek reconciliation and forgiveness from the family of the Deceased.

8. In this case, I have come to the conclusion that a combination of a custodial and non-custodial sentence is most appropriate in this case. It is imperative that the Accused Person serves some time in custody as the only suitable way of expressing society's condemnation of the Accused Person's conduct or deter similar conduct in the future given the nature of the offence committed. Such custodial sentence should only be long enough to serve its signaling, deterrence and rehabilitation purposes. Thereafter, the Accused Person will have an opportunity to serve the remainder of her sentence under Probation.

9. Having considered all the mitigating circumstances and aggravating circumstances, I am of the view that a custodial sentence of three (3) years followed by a Probation sentence of three (3) years is the appropriate sentence to impose in this case.

10. Consequently, in the specific circumstances of this case, I have formed the opinion that a custodial sentence of three (3) years followed by a probationary sentence of three (3) years will be sufficient sentence for this crime. The custodial sentence will begin running from 17/02/2020 since the Accused Person has been in custody since that time. The probationary period will follow immediately after she is released from Prison.

11. Orders accordingly.

Dated and delivered at Nakuru this 4th day of June, 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. Vena Odero, and the Court Assistant were in attendance by video-conference set up at the Court's Boardroom. Representatives of the media were able to access the proceedings by watching at the Court's Boardroom. Accordingly, the proceedings met the constitutional requirement of public hearing.