



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CRIMINAL CASE NO. 27 OF 2019

REPUBLIC PROSECUTOR

VERSUS

JACINTA MUENI WILLYACCUSED

RULING ON SENTENCE

1. The accused was initially charged with the offence of murder, which was by a plea bargain agreement entered into between the same and the State was reduced to manslaughter, for which she pleaded guilty and was convicted to her own plea of guilty.
2. The brief facts of the offence to which she pleaded to, were that she was married to the deceased and were working together at Muthurwa market selling vegetables. On the 1st day of May, 2019, the accused who was a member of a self-help group based at Muthurwa, had gone for a meeting at the social hall accompanied by a colleague from the market, where they were until 6.00 p.m. When they returned to their place of work, the deceased picked up a quarrel with the accused whom he accused to had gone to engage in prostitution. The accused sustained some injuries and she reported to the police who advised her to seek medical assistance first.
3. When she returned to their place of work, the deceased continued to insult her and in the process she picked up a knife and stabbed the deceased once on her neck, from which he bled to death before being taken to the hospital. The post mortem conducted established that the cause of death was exsanguination due to penetrating sharp trauma to the neck.
4. In mitigation, the accused through her Advocate on record Ms Ajiambo submitted that she was a mother of three young children. She was very remorseful and stated that it was the deceased who attacked her first and thereafter insulted her, leading her to act in anger and self-defence. It was contended that her three young children needed parental love and therefore she should be given no-custodial sentence.
5. Mr. Okeyo for the prosecution submitted that the convict should be treated as a first offender.
6. In compliance with the sentencing policy guidelines, the court called for pre-sentencing report wherein it was stated that the accused who was born in 1982 dropped out of school in standard six due to financial constraints and moved to Nairobi where she was employed as a house help. She was initially married to someone else before separating with him and thereafter met with the deceased with whom they had two children. At the time of the commission of the offence she was working together with the deceased selling vegetables at Muthurwa market. She regretted the events that led to the death of her husband and would have acted different given a similar situation.
7. On the victim impact statement, the father of the deceased stated that he was 29 years old at the time, selling vegetables at Muthurwa market in Nairobi while cohabiting with the offender. He was very bitter, since the accused family had not looked for him to offer apology and none of them attended the burial of the deceased.
8. The report concluded by stating that the offender had been married to the deceased for ten (10) years, which marriage was stable despite the deceased drinking problems. On the home report, her mother and uncle indicated that they were in the process of organizing for a meeting leading to reconciliation.
9. Commenting on the said report, Mr. Okeyo submitted that the attitude of both the accused and deceased family had changed since there was a meeting for purposes of reconciliation set for December.

DETERMINATION

10. The objectives of sentencing as per the Sentencing Policy Guidelines are as follows: -

1) **Retribution:** to punish the offender for his/her criminal conduct in a just manner.

- 2) **Deterrence:** to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
- 3) **Rehabilitation:** to enable the offender reform from his/her criminal disposition and become a law abiding person.
- 4) **Restorative justice:** to address the needs arising from the criminal conduct such as loss and damages.
- 5) **Community protection:** to protect the community by incapacitating the offender.
- 6) **Denunciation:** to communicate the community's condemnation of the criminal conduct.

11. In this cause, I have taken note as to why and how the offence was committed, I have taken into account the fact that the accused is a first offender and a mother of three young girls who needs her guidance so as not to turn out like her. The most remarkable outstanding feature of this case is that she is 38 years of age and was age 37 as at the time of the commission of the offence, she was cohabiting with the deceased who was aged 29 years old as at the time. The deceased on the other hand seemed to have been insecure in the relationship leading to him accusing the accused of prostitution despite having been with her for ten (10) years, their age differences notwithstanding.

12. The accused has been in remand custody for a period of one year, during which period of time she must have had time to reflect upon her action which resulted to the death of the deceased whom she considered her husband for a period of ten (10) years and the father of her two children who will always remind her of him and her role in his death which is adequate punishment. I am therefore of the considered view that she is suitable candidate for a rehabilitative sentence.

13. The convict shall therefore serve a probation sentence for a period of three (3) years during which period the Probation Officer shall walk with her to the path of recovery, rehabilitation and settlement in society while taking into account her special need to be in charge of her emotions and anger management and for the benefit of her three young daughters. And it is ordered.

Dated, Signed and Delivered at Nairobi This 8th Day of October, 2020 Through Microsoft Teams.

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J. WAKIAGA

JUDGE

In the presence of: -

Mr. Okeyo for the State

Ms Gulenywa for the accused

Accused present

Court clerk Karwitha