REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL CASE NO. 9 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

METRINE AKINYI ODHIAMBO.....ACCUSED

JUDGEMENT

The accused **METRINE AKINYI ODHIAMBO** was charged with the offence of murder contrary to section 203 of the penal code punishable under section 204 of the same code (Cap 63 of the Laws of Kenya).

The particulars set out in the charge sheet are that on the 21/5/2017 at Olekasasi area in Ongata Rongai Township within Kajiado County the accused murdered Samuel Otuto Ongaki hereinafter referred as the deceased. The state upon arraigning her in court accused pleaded not guilty. She was represented by Learned Cousel Mr. Liko while the state case was conducted by the Principal Prosecution Counsel Mr. Meroka.

In summary the relevant substantial facts are deduced from the testimonies of the nine (9) witnesses summoned by the state as follows:

The evidence tendered by **PW2 – Oliver Naibei** was that on 21/5/2017 the deceased went to their house to wake up his brother Geoffrey Angwenyi (PW4) who was to accompany him to Nairobi. The purpose of the journey was to pursue information on job placement which the deceased had been invited for by his cousin. In a short while PW7 – Victor Sakong had come face to face with domestic violence between the accused and the deceased which happened at their house. As a result of the incident Pw 7 called for help from Pw2 and Pw7 to rush to the scene to see for themselves the injuries inflicted upon the deceased by the accused.

In response to the distress message, according to the testimonies of PW2 Oliver Naibei and PW4 Geoffrey Angwenyi they accompanied PW7 Victor who had come to physically convey the message on the stabbing of the deceased by his wife with a view to take him to the hospital. On arrival at the house PW3 and PW7 found the accused packing her personal belongings as the deceased lay on the ground complaining of pain from the stabbed wounds. Further PW2, PW4 and PW7 decided that the accused be escorted to Olekasasi Police Station as the deceased get rushed to Kenyatta National Hospital for treatment. It was at the hospital the deceased passed on while undergoing treatment.

PW3 Galma Roba testified as the owner of the motor cycle KMCU 381Z which initially ferried the deceased at High Care Medical Centre before being referred later to Kenyatta National Hospital.

PW5 – **Sgt. George Odhiambo** a police detective trained in scene operations gave evidence in regard to photographs taken of the scene of murder at Ole Kasasi. The set of photographs taken and processed under the supervision of PW5 were admitted in evidence as exhibit 6(a) and the certificate as exhibit 6(b).

PW6 – Elijah Kunyanga testified as the Clinical Officer attached to Sinai Hospital which was one of the initial facility which attended to the deceased. On examination of the deceased PW6 told this court that the nature of injuries revealed that he required further specialized management at Kenyatta National Hospital. It is at that moment a decision was reached to source for an ambulance and a referral made to have him escorted to Kenyatta Hospital.

PW8 – PC Joseph Mutonya and PW9 CPC Agnes Adhiambo performed the duties of investigating the murder incident. According to PW8 part of his assignment was to take inventory of the items collected at the scene and also participate in attending the post mortem. He produced the one black kitchen knife as exhibit 2(b) initially exhibit 7 and post mortem form as exhibit 8.

On part of PW9 she gave evidence that in the course of her investigations the following exhibits marked for identification came to her possession: The knife became exhibit 2(a), pair of blue jeans trouser exhibit (3), one red T-shirt exhibit (4), one white vest exhibit 5, mental assessment report exhibit 9 and p3 form for the accused exhibit 10. As the defence had not objected to the production of any of the documentary evidence without calling the makers they were admitted as material evidence in support of the state case against the accused

person.

The analyst Lawrence Kinyua (PW1) gave evidence in respect of the analysis carried out on the blood stained knife, jeans trouser, the vest, T-shirt which were forwarded to him by PW8. PW1 opined that the DNA profile generated from the blood stains from the knife, jeans trouser and T-shirt matched that of the DNA profile of the deceased.

Defence of the Accused

The accused in her defence admits being present in the house where the alleged incident took place. Her version of the fateful day was that she had sought permission from her deceased husband to travel to Nakuru where she was to visit her children. It transpired that the deceased changed his mind by cancelling the trip to Nakuru. According to the accused she decided to unpack her personal belongings now that the journey is no longer tenable. The accused further stated that it was at that moment the deceased got hold of her making attempts to strangle her. When he so held her, the accused stated that she got hold of the kitchen knife to defend herself by stabbing the deceased to stop him from further beatings.

Submissions by the defence Counsel Mr. Liko

The accused person through her counsel Mr. Liko filed written submissions. Mr. Liko points out in the submissions that there was lack of proper malice aforethought. He argued that under the prevailing conditions where an attack ensued between the accused and the deceased it was necessary to take steps to defend herself. Mr. Liko brought to the court's attention the provisions of section 17 of the penal code on self-defense which provides for the use of force in the defence of a person or property. Learned counsel also placed reliance on the principles expounded in the case of **Republic v Ismael Hussain Ibrahim 2018 eKLR., Republic v Joseph Choge Njora 2007 eKLR, Republic v Odhiambo Onyango 2013Eklr, Mokwa v Republic 1976-80 IKLR 1337.** In the circumstances Mr. Liko contended that the prosecution has not discharged the burden of proof of beyond reasonable doubt for the offence of murder contrary to section 203 of the penal code.

Prosecution Submissions

Mr. Meroka Principal Prosecution Counsel for the state submitted and sought to persuade the court that self-defense cannot be availed to the accused person. Mr. Meroka emphasized that in the statement of the witnesses PW2 and PW4 it demonstrates that the accused person had the knowledge and intention that the lethal effect of using a knife was to inflict grievous harm against the deceased. Consequently, Mr. Meroka submitted that by the accused conduct of picking a knife and stabbing the deceased malice aforethought has been established beyond reasonable doubt. Another matter to which Mr. Meroka drew our attention to was that there is no evidence that the accused was under threat of imminent danger to warrant use of excessive force against the deceased. Similarly, Mr. Meroka put a question mark about the injuries as shown in the P3 form allegedly sustained during the struggle of an attack or whether they were occasioned by the deceased? In reference to this Mr. Meroka invited the court to appreciate the state evidence adduced by PW7 who tried to separate the accused and the deceased during the struggle. In a nutshell Mr. Meroka argued and contended that the prosecution has proved the offence of murder to the required standard of beyond reasonable doubt and the accused should be convicted of the offence without any hesitation from the court.

Analysis and Determination

In criminal justice administration the state bears the primary responsibility of proving the charge against the accused person beyond reasonable doubt. Section 107(1) of the Evidence Act (Cap 80) of the Laws of Kenya provides that: **"Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts, must prove those facts exits."**

What constitutes the standard of proof of beyond reasonable doubt can be traced back to **Lord Denning in the case of Miller v Minister of Pensions 1947 2ALLER 372-373** where he held as follows:

> ***"That degree is well settled. It need not real certainty, but it must carry a high degree of probability. Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible but not in the least probable there is proof beyond reasonable doubt but short of that will suffice." (See also Woolmington v DPP (935 AC 462)***

The characteristic of culpability brought about by the prosecution in so far as I have been able to judge from the evidence is purely based on circumstantial evidence. The principles favouring circumstantial evidence have been clearly laid down in the following cases: The cases of **Musili Tulo v Republic 2014 eKLR, Republic v Kipkering Arap Koskei & Another 16 EACA 135 Musike v Republic 1958 EA 715.** The basic principle in all these authorities is that for circumstantial evidence to apply:

> ***"it is necessary before drawing the inference of accused guilty from such evidence to be sure that there all no other co-existing circumstances which would weaken or destroy the inference."***

The prosecution called a total of 9 witnesses to prove the ingredients of the offence beyond reasonable doubt, constituting the following;

> **(1.) Death of the deceased, (2.) Death of the deceased was unlawful (3.) That in causing the death there was malice aforethought on the part of the accused and (4.) That the accused was positively identified as the one who caused or participated in the killing of the deceased**

With these brief background it's now my singular duty to find out whether the accused charge of murder has been proved beyond reasonable doubt.

Death of the Deceased (Samuel Otuto Ongaki)

The law on this issue is settled that proof of death is either through medical evidence or circumstantial evidence. That there is no iota of doubt that a human being once alive is now dead. There is no dispute on the side of the prosecution as supported by the evidence of PW2, PW4 and PW7 all known to the deceased and gave a detailed sequence of events which culminated in his death. The post mortem report from Dr. Walong produced in evidence by PW8 proves that the deceased died on 21/5/2017. His body was positively identified at the mortuary during post mortem by PW4 – Geoffrey Angwenyi, Sgt. George Odhiambo, PW5 from the scenes of crime department confirmed that the photographs taken were of the deceased person. This same body was the subject matter of a post mortem by Dr. Walong at Kenyatta National Hospital mortuary. Clearly all these sufficiently documents to the court that the deceased who passed on was none other than Samuel Otuto Ongaki.

Unlawful death of the deceased

The test here is for the prosecution to prove beyond reasonable doubt that the accused committed an unlawful act which caused the death of the deceased. The wrong act here is one which caused the death of the deceased. The unlawful act is not excusable in law to warrant the court to resolve the defence in his or her favour of the accused that the risk of harm was justified.

In addition, the constitution provides in Article 26 that:

> ***"every person has the right to life." Sub-section (3) "a person shall not be deprived of life intentionally except to the extent authorized by the constitution or other written law."***

One of the circumstances any such actions of killing are excusable in law is where the killing occurs in defence of self, property or a third party certainty to life is threatened with death. Likewise, or excusable homicides are such deaths which result from accident or inadvertent or committed by another human being suffering from mental infirmity. See the principles in the case of **Guzambizi S/O Wesonga v Republic 1948 15 EACA 65).**

The use of lethal force by another human being against another to terminate the life of another human being is considered unlawful. As already indicated the deprivation of life in consideration of section 203 of the penal code can only be justified where the use of force applied against the victim is no more than under the circumstances of absolute necessity. Formal legality in the context enables the person under imminent attack to defend himself or herself from unlawful violence.

Under this ingredient the court was presented with two scenarios. The Principal Prosecution Counsel submitted and maintained that the death of the deceased was unlawfully caused by the accused person while the defence counsel contended that the death was as a result of the accused acting in self-defense from the sustained attack by the deceased.

The question is whether the facts of this case examined as a whole are capable of availing the accused the defence of self?

In order to address this issue appropriately it's important to delve into the law on this subject. The issue of self-defense is stipulated in section 17 of the penal code which provides for the defence of a person or property;

> ***"Subject to any express provisions in this code or any other law in operation on Kenya, criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of English common Law."***

Fundamentals which are required to satisfy the threshold of the defence of self has received considerable discussion in the following cases:

What are the common law principles relating to self-defense?

The classic pronouncement on this has been severally cited by this court is that of the **Privy Council in Palmer v Republic [1971] AC 818.** The decision was approved and followed by the **Court of Appeal in republic v Mcinnes, 55 Lord Morris**, delivering the judgement of the Board said:

> ***"It is both good law and good sense that a man who is attacked may defend himself. It is both good law and common sense that he may do, but may only do, what is reasonably necessary. But everything will depend upon the particular facts and circumstances. …Some attacks may be serious and dangerous. Others may not be. If there is some relatively minor attack, it would not be common sense to permit some act of retaliation which was wholly out of proportion to the necessities of the situation. If an attack is serious so that it puts someone in immediate peril, then immediate defensive action may be necessary. If the moment is one of crisis for someone in immediate danger, he may have to avert the danger by some instant reaction. If the attack is over and no sort of peril remains, then the employment of force may be way of revenge or punishment or by way of paying off an old score or may be pure aggression. There may be no longer any link with a necessity of defense. … the defence of self-defense either succeeds so as to result in an acquittal or it is disapproved, in which case as a defense it is rejected. In a homicide case the circumstances may be such that it will become an issue as to whether there was provocation so that the verdict might be one of manslaughter. Any other possible issues will remain. If in any case the view is possible that the intent necessary to constitute the crime of murder was lacking, then the matter would be left to the jury."***

The Court of Appeal further held that;

"The common law position regarding the defence of self-defense has changed over time. Prior to the decision of the House of Lords in DPP v Morgan [1975] 2ALL ER 347, the view was that it was an essential element of self-defense not only that the accused believed that he was being attacked or in imminent danger of being attacked but also that such belief was based on reasonable grounds."

In the **Court of Appeal Case of Njeru v Republic [2006] 2 KLR 46,** the court in dealing with self-defense held:

"1. A killing of a person can only be justified and excusable where the action of the accused which caused the death was in the course of averting a felonious attack and no greater force than was necessary was applied for that purpose. For the plea to succeed, it must be shown by the accused on a balance of probabilities that he was in immediate danger or peril arising from a sudden and serious attack by his victim. It must also be shown that reasonable force was used to avert or forestall the attack.

1. In this case, it was not in dispute that the appellant, being a police officer on duty, had shot the deceased and killed him. It was therefore upon the appellant to show that at the time of the shooting he was in the course of averting a felonious attack and that no greater force than necessary was applied. The appellant was bound to show that he was in immediate danger or peril arising from a sudden and serious attack by the deceased.

2. By virtue of section 17 of the Penal Code, the principles of the English Common Law were applicable in determining criminal responsibility for the use of force in defence of the person or property. Under those principles, a person who attacked may defend himself but he may only do what was reasonably necessary. Everything would depend on the particular facts and circumstances."

How do these principles apply in respect with the charge against the accused person?

The accused testified in her defence that the deceased descended on her and started to beat and strangle her. She testified that because of the beatings and strangulation she picked the closest weapon, in this case it was a knife, and proceeded to stab the deceased at the back. This was corroborated by the prosecution witnesses like PW7 who testified that he found the accused and the deceased fighting, the accused was holding the knife and the deceased was asking for help saying that he has been stabbed. PW2 testified that the accused was complaining of the beatings and on cross-examination he narrated that the accused alleged she cannot continue being beaten like a child.

In the instant case one is forced to trace the trajectory of events to the time when the deceased went to PW4 and PW7 house to seek assistance on the job placement being worked out by their relative in Nairobi.

In the testimony of PW7 on the material day he went to the accused house to collect his mobile phone given out the previous day for charging as he did not have electricity at the time. It was at such a time that he heard some screams from the deceased house. PW7 elaborated that on gaining entry, he witnessed the accused and the deceased embroiled in a fight. PW7 confirmed that indeed the deceased had been stabbed and was calling for help at the same time crying out that he has been stabbed by his wife.

From the testimony of PW7 it's clear that there was a struggle/fight between the accused and the deceased. Apparently, during the struggle the deceased sustained a stab wound inflicted by the accused person. There was no evidence that he deceased was also armed with any weapon or device. There is material evidence that the accused armed herself with the knife and in retaliation turned hostile against the deceased by using the same knife to inflict physical harm. What went on before the stabbing can only be pieced together from the version given by the circumstantial evidence of PW7 and the admitted facts by the accused. Nevertheless, the fatal stabbing resulted in the death of the deceased. On the other hand, Dr. Walong's post mortem report who examined the deceased confirmed the extent of the injuries seen in particular stab wound on the right chest. In his opinion the stab wound occasioned respiratory failure due to massive right sided hermotherax.

Secondly, going by the provisions of section 33 of the Evidence Act the statement by the deceased made in the presence of PW7 qualifies as dying declaration. On account of the circumstances of this case at the time the deceased made the statement that his wife has stabbed him. He was at the point of death and every hope of survival diminished.

In relation to self-defense on careful consideration of evidence in totality I rest the issue with the following findings: By the nature of injuries the accused did not act in self-defense. First, the deceased was not armed with any dangerous weapon. There was a fight between the two categorized as domestic violence. Secondly, the accused got hold of the knife but did not opt to take flight or run away from the scene. Thirdly, the accused knowing that a knife is lethal weapon when used against a body of human being nevertheless, targeted the vulnerable organ, namely the chest between the 10^{th} and 11^{th} rib. Fourth as deduced from the post mortem report findings the force used in inflicting the stab wound was excessive and disproportionate with the superficial injuries stated to have been suffered by the accused person. Fifth, the accused appeared to know which direction the sharp edge of the knife faced at the time of stabbing the deceased.

From the evidence accused by her own acts inflicted grievous bodily harm on the deceased in furtherance of an attack that resulted in his death. This unlawful act of serious sustained assault by use of a lethal weapon is contrary to criminal law. The underlying philosophy under this ingredient is to bring the case within the scope of culpable mensrea; otherwise, the accused would take all the steps to justify or decriminalize the unlawful act. Fortunately for this case it is explicit that the risk of death from the unlawful act of assault by the accused was not fanciful but one which involved a high risk of grievous harm and or death. Indeed, in the present case the deceased died thereafter of the serious injury inflicted by use of a knife.

First, let us take for a moment the defence raised by the accused person is valid that the deceased provoked the attack. In the case of **Robert Kinuthia v Republic 1982-88 eKLR 611,** the court in interpreting section 17 of the penal code held interalia that:

"Where a person is unlawfully assaulted it is lawful for him or her to use such force on the assailant as is reasonably necessary

to make effected defence against the assailant. However, the force to be used in such circumstances must not be excessive not intended to cause death or grievous harm."

In the instant case the accused in defence of the attack failed to demonstrate existence of absolute necessity to authorize her to use lethal force against the deceased. It is also clear from the evidence taken together that she had no reasonable ground to react as she did which led to the fatal injuries the deceased sustained.

As observed from the prosecution evidence the direction taken by the accused that she acted in self-defense has been controverted by disentitling her of the plea. In my view there is in escapable inference that what the accused did was not act done by way of self defence but one carried.

Having set out the arguments and submissions advanced on behalf of the accused and the state witnesses the accused by means of a knife she stabbed the deceased which in the circumstances she could cause grievous harm or death. I am satisfied that the ingredient of death being unlawfully caused has been proved beyond reasonable doubt.

Element of Malice Aforethought

The law on malice aforethought is provided in section 206 of the Penal Code which states as follows:

Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:

(a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not

(b) knowledge that the act or omission causing death will probably cause death or grievous harm to some person whether that person is actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is cause or not, or by a wish it may not be caused

(c) An intention to commit a felony and

(d) An intention by the act or omission to facilitate the flight or escape from custody of any person who committed or attempted to commit a felony

The law has explored the appropriateness of intentional wrongs which constitutes malice aforethought. In order to prove malice aforethought that the accused chose to commit the murder it means he intended with certainty that such an action would cause death or serious grievous harm. It must therefore be a conscious intent to kill another human being without any justifiable cause. Much has been written in the various decisions by the superior courts on which conduct a manifestation of malice aforethought can be inferred.

Republic v Tuber S/O Ochen 1945 EACA 63 the court held that:

"an inference of malice aforethought can be established by considering the nature of the weapon used, part of the body targeted, the manner in which the weapon was used and the conduct of the accused before, during and after the attack."

Ogelo v Republic 2004 2KLR 14; the court held that: "malice aforethought can also be inferred from the manner of killing."

In the case of **Nzuki vs Republic [1993] KLR 171** the court of Appeal held that:

"***before an act can be murder it must be aimed at someone and in addition it must be an act committed with the following intentions, the test of which is always subjective to the actual accused.***

Intention to cause death

Intention to cause grievous bodily harm

Where accused knows that here is a risk that death or grievous bodily harm will ensue from his acts and commits them without lawful excuse. It doesn't matter whether the accused desires those to ensue or not. The mere fact that the accused conduct is done in the knowledge that grievous harm is likely or highly likely to ensue from his conduct is not by itself enough to convert a homicide into a crime of murder."

The distinctive virtue of this courts approach on matters of intention in the commission of a crime was clearly expounded in the case of ***1974 2 ALL ER 41*** where Lord deplock stated "***No decision claim is to be drawn in English law between the state of mind of one who does an act because he desires it to produce a particular evil consequence, and the state of mind of one who des the act knowing full well that it is likely to produce that consequence, although it may be the object he was seeking to achieve by doing the act. It is by now well settled law that both states of mind constitute intention in the sense in which that expression is used in the deporting of a crime whether at common law or in a statute"***

What these persuasive specific intent and the frame of mind the prosecution must prove by way of evidence to satisfy the ingredient of the

offence of murder contrary to Section 203 of the penal code. A corresponding approach emaciated by this decision is whether by the accused action it is foreseeable or had the knowledge that serious harm or death of the deceased would result from inflicting harm with a knife.

In the context of ingredient on malice aforethought it is no defence that the injury which endangered life could have recovered if the victim was able to receive appropriate medical treatment. The availability or otherwise medical treatment as espoused in Section 213 of the penal code is no defence that the accused had no intention to kill or cause grievous harm.

Given this background is the accused liable to have caused death with malice aforethought?

The accused in her defence and written submissions raised the issue of self-defense and she was defending herself. There was evidence from the prosecution witnesses; PW7 testified that he found the accused fighting, the accused was holding a knife and the deceased was asking for help saying that he was stabbed, PW2 testified that the accused was complaining of the beatings and cross-examination the accused was saying that she cannot be beaten like a child.

In the instant case the accused person is said to have committed the murder with malice aforethought, the trier facts however indicate circumstances which create a narrative of a domestic violence. The question I pause is whether the prosecution has discharged the burden of proof beyond reasonable doubt that the case falls within the ambit of section 206 of the penal code that the consequences the absence of malice aforethought can allow the accused to be excused from criminal liability in so far as the provisions of section 203 of the penal code are enacted. These principles were set out in the case of **Nebart Ekaira v Republic 1994 eKLR** where the court of Appeal held:

> ***"It remained a matter of guessing whether or not the appellant knew that there was a serious risk that death or grievous bodily harm would ensue from his sustained assault on the deceased. the possibility therefore that the appellant killed the deceased by a suspected unlawful assault but without the intent necessary to constitute legal malice aforethought to the proof of the offence of murder contrary to section 203 of the penal code cannot be excluded, in the circumstances we are unable to uphold the appellant's conviction on murder."***

From the facts of this case there is an indirect implication of the defence of provocation as defined in Section 207 and 208 of the penal code. For purposes of determining whether the accused act or omission was done under provocation can be deduced from the testimony of Pw7 and the defence in answer to the charge. In the present case taking into account the circumstances in which this assault took place there is every likelihood the deceased inflicted harm against the accused person. This inference is to be found in the P3 form adduced in evidence as reasonable ground that the accused was assaulted. There were only two people inside the house where all these transactions were taking place. One cannot rule out the conduct of the deceased which would have induced the act or omission causing grievous harm and subsequently death. Depending on the gravity of violence the accused was subjected to which she refers as strangulation one may excuse her for having lost self-control and took the law into her own hands by forming the intention to cause grievous harm or death of the deceased.

It is therefore my considered view going by the above principles that the prosecution has not proved intention to cause death of the deceased malice aforethought is therefore out of the equation. What is clear from the totality of the evidence is that the prosecution has brought the cowardice of the accused by proving that she committed the unlawful act of assaulting the deceased with a knife. That the act by its nature is not excusable and in my respectful view was dangerous with an inherent risk to cause death or grievous harm. That the killing of the deceased with a knife in absence of any of the criminal defenses known in criminal law is homicide. It is not in dispute that the physical harm inflicted caused the death of the deceased.

From the foregoing, I am satisfied that the prosecution has discharged the burden of proof of beyond reasonable doubt for the offence of manslaughter as depicted in section 202 of the penal code and punishable under section 205 of the same code against the accused. Accordingly I enter a verdict of guilty and conviction for the aforesaid offence against the accused person.

Sentencing

I have considered the mitigation offered by counsel for the accused on behalf of the accused as well as the pre-sentencing report. I have considered the circumstances and the sequence of events that culminated in the deceased's death. While the accused pleads self-defense, I note that the accused was aggressive in her conduct. She got hold of the knife but did not opt to take flight. Rather, she decided to use it on the deceased. She had adequate knowledge that a knife is a lethal weapon. I take note of the vulnerable organ, to wit, the chest which the accused stabbed knowing that death could culminate. Clearly, the accused used disproportionate and excessive force by her own acts to inflict grievous bodily harm on the deceased. These acts cannot fall within the realm of self-defense.

I take the view that the death of the deceased was caused quite deliberately, by the accused. In the premises, I believe that she merits a custodial sentence, to remind her of the quest to value human life. It is noteworthy that when passing a sentence the court must look at the objective to be achieved. Whether deterrence, public protection or reformation is the objective, courts must first of all have regard to the nature and circumstances of the offence, the offender, the victim and the public interest. In simple terms, courts look at the aggravating and the mitigating factors of the offence as well of the offender. The sentencing court must therefore weigh the two and come to an informed conclusion as to the type of sentence to impose.

Applying the foregoing in instant case, I have noted that the accused is a 22 year old mother of two. As a mother, she is charged with the responsibility of taking care of her children which goes to show that she was endowed with the requisite knowledge pertaining the value of life. Clearly, she knew or she ought to have known that one should not act in a manner that is likely to jeopardize human life.

I have considered section 333(2) of the Criminal Procedure Code which requires a sentencing court to take into consideration the period that a convicted person has spent in custody prior to the sentence. The record indicate that the accused was arraigned before this court on 8th June, 2017 which means she has been in custody for approximately two years. I have taken the two years into account for the purposes of sentencing herein. The maximum sentence in terms of Section 205 is that of life imprisonment. This goes to demonstrate the gravity of the

offence to be taken into account during sentencing. However in the instant case am inclined to impose the maximum sentence due to the personal circumstances of the accused.

Accordingly, I hereby sentence her to ten (10) years imprisonment. She has a right of appeal on both conviction and sentence within 14 days from the date of this judgement.

DATED, DELIVERED AND SIGNED IN OPEN COURT THIS 3RD MAY 2019.

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R. NYAKUNDI

JUDGE

Representation

Mr. Meroka for the DPP

Mr. Liko for the accused.