



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL CASE NO 9 OF 2017**

**LESITT, J**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**FATMA MOHAMED OKOTH.....ACCUSED**

**RULING ON SENTENCE**

1. The accused was arraigned in court on 16<sup>th</sup> February 2017 charged with one count of murder contrary to **Section 203** of the **Penal Code**.
2. This court delivered its Judgment on 29<sup>th</sup> August 2019, after hearing the entire case, and convicted the accused of **manslaughter** contrary to **Section 202** of the **Penal Code**. Under **Section 205**, a person convicted of manslaughter is liable to imprisonment for life.
3. I have considered that the Prosecution has treated the accused as a first offender.
4. Mr. Mwitwa Learned Defence counsel mitigated on behalf of the accused. Counsel urged that the accused was remorseful and that she was still mourning the death of her boyfriend. Counsel urged that the accused having been on bond during the pendency of her trial, she had abided by the bond terms throughout the trial process. Counsel urged that the court should consider the period the accused spent in custody before she was released on bail.
5. Counsel urged that the objectives of the Sentencing Guidelines had been achieved as retribution had taken effect by the fact that the accused had toiled to attend court and that she had learnt her lessons. Counsel urged that the court had noted that it was a single stab wound and as such, the aggravating circumstances had not been established. Counsel urged that it can be insinuated that the deceased was violent and the accused was only defending herself.
6. Counsel urged that the court should consider awarding a non-custodial sentence and place the accused on a probation term. Counsel urged that there is no need to exhaust the little resources prison has to feed the accused. Counsel finally urged that the accused can be resourceful to the society and be useful in a children's home.
7. The court asked for a pre-sentence report from the Probation Office. One dated 19<sup>th</sup> September 2019 was filed and I have considered it.
8. The accused personal background is incorporated in the report. I note that she is a graduate of Applied Chemistry and has been described as dutiful and obedient by her former employer.
9. The accused attitude towards the offence has been described as one of a person who is remorseful for her actions. The accused is seeking forgiveness from the victim's family and said she had made efforts while in custody that were never fruitful. The accused father has asked the court to be considerate of the accused education attainment and her age since she can be resourceful to both the society and country as a whole. He reported that the accused had undergone trauma and was suicidal after the incident prompting the family to engage a professional counsellor for her and the entire family. I have considered the attached counsellors report.
10. The victim impact statement from the deceased parents was incorporated in the report. The deceased mother expressed a lot of sorrow over the death of her son having raised and educated him alone after she separated from the father. The mother urges the court to visualize how much the deceased had worked to attain a license as a pilot instructor, and the number of people he would have mentored and helped had he lived. She stated that apart from the financial loss, she lost a child. She further expressed reservations for the accused being granted non-custodial sentence and wants the accused to face the full force of the law by getting the maximum sentence for the offence convicted of. This she says would still not bring back her son but at least justice will be seen to have been done. She intimated that she feels the accused is

not remorseful for the offence she committed.

11. The probation officer did not give any definite recommendations.

12. I have considered the mitigation offered by the accused defence counsel, the probation officers detailed report and the fact that the prosecution has treated the accused as a first offender.

13. I have considered that the accused was incarcerated for a period of roughly 2 months before she was released on bond, and the period she has served after the conviction.

14. Counsel for the accused submitted in mitigation that retribution had been served in this case for reason the accused had attended court throughout the pendency of the case. Retribution under the Sentencing Guidelines has to do with payback for the wrong done, usually to the victim. It is not an inconvenience suffered by the offender before the case is over.

15. I have considered the circumstances of this case. The accused and deceased were in a relationship and the cause of their disagreement on the date was perceived infidelity on the part of the accused. The facts of the case clearly show that the accused stabbed the deceased as they were engaged in an altercation. She immediately thereafter asked for help from the deceased friends. However it was too late by the time help arrived as the deceased had already bled to death.

16. Throughout the trial, the accused denied stabbing the deceased. The injuries he suffered ere not commensurate to suicide as she sought the court to believe. I also noted from the Probation Report that the accused reached out to the family of the deceased only after her conviction and incarceration. I share the deceased family's doubts about her remorsefulness.

17. This incident was definitely a painful one to all parties concerned. The reason for the altercation was claims of infidelity against the accused. The deceased was right as the evidence adduced in this case clearly shows she had spent a night with her former boyfriend before returning to his house. It is her right to lead the kind of life that she wishes. However, I say what I have said over and over again, disagreement or a broken relationship is not the end of life. It cannot justify an attack that leads to death. Every action has consequences. It also leads to broken hearts and broken lives. The death of a loved one, the loss of a child, and the penalty for the offence. All these are expensive consequences, and some of the victims of them are afflicted for a long time, including the culprit.

18. I have considered the deceased. He was a young person who had accomplished a lot going by the facts contained in the victim's statement. It is a great tragedy for the family and the nation at large to loose such a potential talent and resourceful person under the circumstances of this case.

19. On the other hand the accused is equally young and has great potential going by her education background. The fact that a misunderstanding with her boyfriend would lead her to commit this crime is appalling and regrettable at the same time. Her actions have caused a great disservice to her family and that of the deceased family. Had she walked away and explained to her boyfriend thereafter why the ex-boyfriend was appearing on her call logs then maybe the two would be living happily together.

20. Young people, I say it again. It is cool to walk away. Moderation and restraint should always be the driving force, and should be exercised as a first priority before any attempt to resolve the differences in order to give time for reflection and calming down of emotions. Nothing can be said or done to you that can justify taking away life, or harming someone.

21. Part of the purpose of mitigation according to the now famous **Muruatetu Case** is to allow an accused now convicted person a last chance as it were to explain themselves. What led them to do what they did. So that the court can be able to understand the pathos that led to the tragedy. The accused has not shown any pathos.

22. The court should also consider whether there was aggravation demonstrated in the circumstances of the case. I think the manner in which the accused dug into the deceased chest, fracturing the sternum and piercing right through to the heart is proof of aggravation. It was not just a single stab, but one meant to run deep and it did.

23. Having considered all the facts, circumstances and reports on record, I find that the justice of this case requires a custodial sentence. In spite of accused plea for non-custodial sentence and the fact that she is a young educated lady with a bright future, I find that she should spend some little more time in custody for her to appreciate the magnitude of her actions and benefit from counselling and rehabilitative programs while serving sentence. I will therefore sentence the accused to six (6) years imprisonment.

24. The accused has a right to appeal against the conviction and sentence within 14 days of today.

**DATED AT NAIROBI THIS 7<sup>TH</sup> DAY OF OCTOBER 2019.**

**LESIT, J**

**JUDGE**