



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL CASE NO. 8 OF 2019

REPUBLICPROSECUTOR

VERSUS

ERNEST OMBEWA WAGALAACCUSED

SENTENCING

1. Ernest Ombewa Wagala was initially charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The facts were that on the night of 30th April 2019 and 1st May 2019 at Inkisanjani Township in Loitokitok Sub County within Kajiado County he murdered Gladys Okinyi Ogotu. There after a plea bargain allowed under section 137A of the Criminal Procedure Code was entered into between the accused, his advocate and the prosecution.

2. The court examined the agreement and explained to the accused the import of the plea bargain as well as his rights if he entered into the plea bargaining and if he elected to go on with the trial. The court was satisfied that the agreement had been entered into freely and allowed the accused to plead to manslaughter. He pleaded guilty to a lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. This was after the court allowed the request by both the accused and the prosecution to accept the plea bargain agreement reached between them. The accused was thereafter convicted for manslaughter on his own plea of guilty thus this sentencing.

3. The accused and deceased were a couple living together as husband and wife. On the night of 30th April, 2019, the accused went to watch a football match (European Champion League) between Tottenham Hot Spurs and Ajax Amsterdam. After the match the accused returned home and found the deceased asleep. The deceased refused to open for the accused and asked him to go where he had been. She in particular asked the accused to go to Sabina Mapekeri's place. The accused forced his way into the house, and a quarrel ensued over allegations of infidelity. The accused picked a fight and hit the deceased all over the body with a blunt object. She bled profusely and lost consciousness.

4. Noting that all was not well with the deceased, the accused ran away leaving the deceased alone in the house. The following day, neighbours noticed that something was not right in that house and called the accused's brothers who came and on opening the door only to find the deceased's lifeless body in a pool of blood. A report was made to the police who came and took the body to the mortuary. A postmortem revealed that she died from head injuries she sustained as a result of the assault. On 3rd May, 2019, the accused presented himself to Loitokitok police station, was arrested and charged.

5. In mitigation, counsel for the accused told the court that the accused was remorseful and regretted the events that led to the fight and the death of his wife; that the accused suffers from hypotension and blood pressure; that he is the sole breadwinner and that although he did not have children with the deceased he had children from another marriage. He urged the court to exercise leniency in meting out sentence.

6. On his part, Mr. Meroka told the court that he had no previous record and asked the accused to be treated as a first offender. He however informed the court that one of the deceased's sisters was in court and wanted to say something.

7. Beatrice Adhiambo, spoke on behalf of the deceased's family. She told the court that the deceased was the 5th child in their family; that she was married to the accused and that she had a child aged 16 years from a previous relationship. She told the court that the boy who is a student was shocked by his mother's death but was now coming to terms with the situation. She prayed that justice be done in this case. She told the court that she was the nearest person to her sister and would prefer a custodial sentence.

8. I have considered the facts of this case, the circumstances under which the deceased died and the fact that the accused is a first offender. I have also considered the sentiments of the victim's family through Beatrice Adhiambo, sister to the deceased.

9. The deceased and accused were a couple living together as husband and wife. The incident occurred purely from what would appear to have been a small misunderstanding but filled with suspicion of infidelity. It exploded that fateful night leading to the unfortunate killing of the deceased.

10. The accused is said to have repeatedly hit the deceased with a blunt object. He then left her bleeding in the house and ran away. He did not mind about what would happen to her despite the injuries. He did not even consider taking her to hospital for treatment. He left her to bleed to death. This is not how as the husband he should have behaved towards his wife. Despite the disagreements for whatever the cause, the accused should have tried to assist the deceased get medical treatment and, who knows, she may well have pulled through. Instead, he left his wife bleeding to death.

11. Although the accused is a first offender his behaviour was deplorable. It is not excusable. There is no evidence that the two had a child together but the deceased's sister told the court that the deceased left behind a child from another relationship. The child is now 16 years and in school. He was struck by the death of his mother but is slowly coming to terms with the loss. It was not made clear to the court whether the child was staying with the deceased and the accused at the time or at all. Counsel for the accused also told the court that the accused had his own children from another relationship.

12. Regarding sentence, the law provides for a life sentence on conviction for manslaughter. Section 205 of the Penal Code provides that any person who commits the felony of manslaughter is liable to imprisonment for life. However, this is the maximum sentence and therefore the sentence to met out is at the discretion of the court taking into account the circumstances of each case and any aggravating or mitigating factors.

13. I have considered the facts of this case and the circumstances leading to the commission of the offence. I have also taken into account the mitigation made on behalf of the accused as well as the sentiments of the family of the victim. The deceased left behind a son who was traumatised by not only the death of his mother but also the manner in which it occurred. He is trying to come to terms with this death. On the other hand the accused is said to have children from another relationship who depend on him.

14. In the end the duty of the court is to ensure that justice is done to the parties both the victim's family and the accused. The court must therefore balance the scales of justice to serve society and the accused as it punishes the offence committed.

15. In that respect, this court must bear in mind the circumstances under which the offence was committed and the relationship between the accused and the deceased who were living together as husband and wife. The issue started as a domestic quarrel but took a turn leading to loss of life. The accused injured the deceased but ran away without taking her to hospital for treatment. That behavior cannot be condoned. It aggravated the offence.

16. For that reason I find a custodial sentence appropriate in this case. Consequently the accused is hereby sentenced to five years imprisonment. The sentence to run from the day of arrest that is, 3rd May 2019. Right of appeal on sentence explained to the accused.

Dated Signed and Delivered at Kajjado this 6th Day of December 2019.

E C MWITA

JUDGE