



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 6 OF 2016

REPUBLIC..... STATE

VERSUS

JACKLINE KWAMBOKA OMBONGI.....ACCUSED

SENTENCE

1. The accused was initially charged with the offence of murder contrary to **Section 203** as read with **section 204** of the **Penal Code** the particulars being that on the 9th day of April, 2017 at Kenama village, Keragia Sub-location within Gucha Sub County in Kisii County, she murdered **Charles Ombongi Manyara**.

2. She pleaded not guilty to the said charge but soon thereafter, her counsel and the state engaged in plea bargain negotiations which culminated in a plea bargain agreement which was registered in court on 24th January, 2018. The essence of the said agreement was that accused agreed to plead of guilty to a lesser charge of manslaughter contrary to **Section 202** as read with **Section 205** of the Penal Code and she was consequently convicted on her own plea of guilty.

3. The facts of the case were that the deceased and the accused were husband and wife respectively and that on the material day at about 12.30am, the peace and tranquility of the night was interrupted by loud screams emanating from the deceased’s house. Many people, including neighbors and relatives responded to the screams by converging at the deceased’s house where they found the accused crying while the body of the deceased lay in the sitting room beside a chair. It turns out that on the material night, the deceased came home drunk and picked a quarrel with the accused as was common in their relationship but that on this particular day, the quarrel degenerated into a physical confrontation in which the accused overpowered the deceased before strangling him to death. It was noted that the deceased body had bruises on the neck and blood stains.

4. A postmortem examination conducted on the body of the deceased established the cause of death to be strangulation. The postmortem report was produced as Pexhibit 1.

5. In mitigation, Mr. Bigogo, learned counsel for the accused submitted that the accused was extremely remorseful for the events that led to the death of the deceased. He added that the accused had no intention of killing the deceased, and that the deceased used to come home drunk and would violently chastise her every night but that on the material night, she dodged his blows and got hold of his neck when he fell down only for her to realize shortly thereafter that the deceased had died thereby prompting her to raise an alarm to call for help from the members of the public. Counsel for the accused observed that the accused would not have raised an alarm if she had any malice as she could have easily vanished into the night to avoid being held responsible for the deceased’s death.

6. Counsel further stated that the accused was a young lady aged 40 years and that she had a young son aged only 5 years who had been left in the care of an aged grandmother following her incarceration. He urged the court to consider granting the accused a non-custodial sentence.

7. This court called for the probation officer’s report before sentencing which report confirms that indeed the accused and the deceased had a troubled marriage punctuated by many fights that led to the accused having a lot of pent-up emotions and anger that exploded on the night that the deceased died. The probation officer noted that the accused was the sole bread winner for her family while the deceased was a habitual drunkard who would cause chaos in the home while under the influence of alcohol as was the case on the night that he died. He also observed that neighbors depicted accused as a responsible woman who was not previously known for any anti-social activities and he therefore urged the court to extend mercy to the accused through a non-custodial sentence so that she can take care of her young child.

8. Section 205 of the **Penal Code** prescribes the sentence for the offence of manslaughter as follows:-

“205. Punishment of manslaughter Any person who commits the felony of manslaughter is liable to imprisonment for life.”

9. Manslaughter is a felony and owing to its gravity the maximum penalty on conviction is equally severe. However, the penalty is not

mandatory meaning that the court has the discretion not to impose the maximum penalty if circumstances so demand. Such circumstances would, in my humble view, include; the circumstances under which the offence was committed, whether the accused person is remorseful and if there are any mitigating circumstances that would warrant a less severe sentence than the prescribed maximum penalty.

10. I have considered the unfortunate circumstances under which the deceased met his death and the mitigation tendered by the accused herein through her advocate Mr. Bigogo. It is clear to me that the accused was a victim of domestic gender based violence and that it was only a matter of time before she was maimed or fatally injured by the deceased save that on the fateful night tables turned on the deceased who found himself on the receiving end albeit with unexpected deadly results. I am convinced that the accused fought back the deceased in self defence and did not intend to kill him as shown by her quick action to raise an alarm when she noted that the deceased was dead. I am persuaded that she did not set out to kill the deceased in what turned out to be their last confrontation.

11. Equally important to note is the fact that the accused is a mother of a minor aged 5 years who is entitled to her motherly care. This is not to say that the accused should escape punishment for her crime, but justice must also be tempered with mercy and more so, when the future and interest of an innocent child is on the line. In the above circumstances, the court has to juggle and strike a delicate balance between punishing the offender, subject of course to the mitigating factors that I have pointed out, and the competing interests of the minor. This balancing act leads me to conclude that a non-custodial sentence would be appropriate punishment in this case.

12. Consequently, I hereby sentence the accused herein to 2 years' probation during which period she will be supervised by the probation officer of her area.

13. It is so ordered.

Delivered, dated and signed in at Kisii on 7th of March 2018.

W.A. OKWANY

JUDGE

In the presence of:

Mr. Otieno for the State

Mr. Bigogo for the Accused

Omwoyo court clerk