



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO. 21 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

MARGARET WANJIKU BETH.....ACCUSED

SENTENCE RULING

1. On 08/03/2018 I convicted Margaret Wanjiku Beth (“Accused Person”) of the offence of killing Daniel Njuguna Mburu (“Deceased”) with malice aforethought. That offence attracts a maximum penalty of death by virtue of section 204 of the Penal Code as read in the light of the Supreme Court decision in *Francis Karioko Muruatetu & Another v Republic [2017] eKLR*. To be clear, the maximum penalty is the death penalty but the Court has discretion to impose any other penalty that it deems fit and just in the circumstances.

2. To this extent, the Court held a sentence hearing on 07/06/2018. The family of the victim, the Prosecutor and the Defence Counsel addressed the Court during the hearing.

3. The Deceased’s mother, Margaret Wambui, asked the Court to consider giving a very stringent custodial sentence. In her view, the Accused Person has shown no remorse for her actions that unfairly took away the life of her son. She bitterly regretted that she now has to live with the trauma of the loss of her son – yet the Accused Person or her family had never even bothered to go visit them to condole them. She thinks that the Accused Person has evidenced callous and unapologetic behaviour.

4. The Deceased’s brother, Patrick Kibuthi Ngotho, also addressed the Court and expressed similar feelings about the Accused Person and her family. He pointed out that there are customary procedures for the family of perpetrator of a death to approach the family of the victims but the Accused Person’s family had not bothered to do so in this case..

5. On his part, the Prosecutor, Mr. Maatwa informed the Court that the Accused Person was a first offender – and that he had no recommendation on the sentence.

6. Mr. Muchiri, Counsel for the Accused Person, pleaded with the Court to consider a lenient sentence. He told the Court that the Accused Person is remorseful. That she has a sickly and elderly mother and a daughter who is a special needs child. The elderly and sickly mother has now had to take care of the special needs child. Mr. Muchiri appealed to the Court, in the best interests of that child, to consider giving light sentence – possibly non-custodial sentence – to the Accused Person.

7. Mr. Muchiri urged the Court to recall that the Accused Person has been in custody for more than four years during the pendency of the case – and that she is still young and fully capable of rehabilitation.

8. I have considered all the factors relevant to sentencing in this case.

9. Committing premeditated homicide is, obviously, a serious crime – one which the society must, through the sentence the Court imposes – denounce loudly and clearly. However, in the terrifying realm of premeditated murder, there are gradations. Death sentence, even if still constitutional, is reserved for the highest level of murder convictions – for example, where the Accused Person acted with particular level of depravity, cruelty or torture; where they targeted particular vulnerable group or social class that deserves particular protection; or where the murder was a result of particularly intricate planning born out of a depraved heart.

10. None of these factors are present here. The Court has already found that the legal element of pre-meditation was present sufficient to make the homicide here murder as opposed to manslaughter. However, the circumstances of the offence suggest that the Court should begin at the lowest level of permissible penalty. The factors indicating these are the following:

- a. The Accused Person is a first offender;

- b. The Accused is a single young mother of a special needs child;
- c. The circumstances in which the offence was committed do not evidence any level of advance or intricate planning;
- d. There evidence on record to show a troubled relationship between the Accused Person and the Deceased, who was her husband, which contributed to the spontaneous violence which led to the killing of the Deceased. That relationship was characterized by the heavy drinking by the Deceased;
- e. The homicide did not occur in the midst of commission of another felony or during flight from the commission of another crime; and
- f. The expressed remorse of the Accused Person.

11. The Court has also considered the expressed views of the Victim's family who have urged the Court to consider very stiff penalty to the Accused Person. The Court respects their views that the Accused Person has not behaved in a manner consistent with a penitent and remorseful offender.

12. Additionally, the Court has considered, as an aggravating circumstance which should attract the society's condemnation in the form of increased punishment, the Accused Person's post-offence conduct: that she ran away and remained a fugitive of justice between March, 2014 when the incident happened and December, 2015 when she was apprehended.

13. After considering all these factors, I am persuaded that a custodial sentence of fifteen (15) years will be an appropriate sentence for this homicide and I hereby sentence her to imprisonment for that period. Since the Accused Person has been in custody since 30/12/2015 when she was first arraigned, in light of section 339 of the Criminal Procedure Code, I will direct that the period of her incarceration be calculated from that date.

14. Orders accordingly.

Delivered at Kiambu this 8th day of June, 2018.

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JOEL NGUGI

JUDGE