

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NUMBER 58 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

HEZRON MWAURA MBOGO.....ACCUSED

RULING ON SENTENCE

Hezron Mwaura Mbogo is accused of the murder of Lilian Gaitugi Kimathi alias Lillian Gatweri contrary to section 203 as read with section 204 of the Penal Code. Particulars of the offence show that this murder was committed on 10th of December 2017 at Kamunyonge Village, Ruai Location in Njiru Sub-County within Nairobi County. The accused was arraigned in court on 28th December 2017 but the plea was not taken until 5th January 2018. He pleaded not guilty to the charge. The case was listed for hearing on 1st, 2nd and 2rd October 2018 but the parties entered into a plea bargaining agreement before the hearing date. The court accepted the offer to enter into the plea bargain to a lesser charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The prosecution filed this new information on 30th July 2018. On 9th August 2018 the accused took plea on the charge of manslaughter. He pleaded guilty to the charge.

The facts of the case as presented by the prosecution show that the accused and the deceased were husband and wife. On 10th December 2017 they were together at Kamunyonge Village in Ruai when a domestic quarrel ensued between them. This led to a fight. The accused picked a knife and stabbed the deceased on the chest. The accused called Jane Nyakio the Landlady to help break open the door to their house because the deceased had locked it and hidden the keys. Jane was assisted by Peter Mutisya alias Njomba. They opened the door and found that the deceased had died. The matter was reported at Ruai Police Station. The police visited the scene where they found the deceased lying in a pool of blood. The body of the deceased was removed and taken to the City Mortuary and the accused was arrested and detained at Ruai Police Station where he was charged with murder. The body of the deceased was examined on 19th December 2017. The pathologist determined that the deceased had died due to chest wounds due to penetrating sharp trauma. The accused was examined and found fit to stand trial. The post mortem report was produced in court as Ex. 1 and the P3 form in respect of accused's mental status was produced as Ex. 2.

The accused admitted the facts as presented. This court found the accused guilty and convicted him on his own plea of guilty. This court was informed by the prosecution counsel that the accused did not have previous criminal records and should be treated as a first offender.

In his mitigation before sentence, the accused informed the court through his legal counsel Mr. Njuguna that he was aged 32 years old and that he was married to the deceased. He told the court that on the fateful day both the accused and the deceased had been drinking; that the deceased locked the door and hid the key; that she confronted the accused and a quarrel ensued and that the accused picked a knife and stabbed the deceased. It was mitigated that the accused was remorseful and regretted killing his wife. The court was told that during his stay in custody the accused had rehabilitated and converted into Christianity and that he had undertaken various courses with certificates produced in court. Mr. Njuguna urged this court to sentence the accused to a non-custodial sentence to enable him reform and pursue his career as an electrician. Mr. Njuguna urged this court to consider the time the accused has spent in custody and find that there are no aggravating circumstances to warrant a stiff sentence.

This court called for a pre-sentence report from the probation officer. It was filed on 17th September 2018 although it is dated 18th September 2018. I have read the report. I find it favourable. I note that both families have met and held reconciliatory discussions where some money, Kshs 40,000 was paid by the family of the accused to the deceased family to cover part of the funeral expenses.

I have considered the unfortunate circumstances of this case and the fact that the accused regrets killing his wife. I have noted that both had been drinking before the deceased locked the house in which they were and hid the key. Indeed help took a while to arrive due to those circumstances. I note that by the time help was found, the deceased had already succumbed to the stab wound and had died. I note that it is only the word of the accused that the deceased is the one who confronted him since the police do not have any other version of the facts. I have also taken into account that the accused has pleaded guilty and spared the court precious judicial time. I also take into account that he is a first offender. I therefore sentence the accused to serve two years imprisonment and consequent supervision by a probation officer for another two years. He has right of appeal within 14 days from today's date. Orders shall issue accordingly.

Delivered, dated and signed this 20th day of September 2018.

S. N. Mutuku

Judge