

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NO 16 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

LEAH WAIRIMU WANJIE.....ACCUSED PERSON

SENTENCE RULING

1. In a judgment dated 04/06/2018, the Honourable Lady Justice Maureen Odero convicted Leah Wairimu Wanjie (“Accused Person”) of the offence of murder contrary to section 203 as read together with section 204 of the Penal Code. At the time the judgment was delivered on 18/06/2018, Lady Justice Odero had left the Station. It fell on me to read the judgment on her behalf and conduct the sentence hearing.

2. The Accused Person was charged with killing, with premeditation, Francis Ngene Mbuthia (“Deceased”). The details of the offence are contained in the judgment and the Trial Court record. In brief, evidence showed that the Accused Person was an estranged wife to the Deceased. On 13/02/2013, she went to his place of business (he had a stall at which he sold cigarettes) and picked a quarrel with him. The Accused Person then grabbed the Deceased by the collar, removed a knife from the waist band of her trousers and fatally stabbed the Deceased. The Deceased died from that single stab wound. It was testified that just before stabbing the Deceased, the Accused Person coldly said: “*Did I not say that I will kill you?*”

3. Mr. Chigiti, the State Counsel, is persuaded that the circumstances here point to an aggravated murder that should attract the stiffest sentence below the death penalty. He pointed out that the murder was pre-planned not just pre-meditated since the Accused Person traveled from her home to the Deceased’s place of business armed with a knife with the sole intention of killing him. She accomplished this, Mr. Chigiti argued, by stabbing him in the chest where she was sure there were great chances of death ensuing. Mr. Chigiti also asked the Court to consider that as a result of her actions, the child the Accused Person and the Deceased bore together was left without a father.

4. The Accused Person addressed the Court on her own behalf. She pleaded for leniency. She stated that she feels bad about her action every day; and that her actions were not intentional. She persisted in the narrative that she and the Deceased Person were drinking together when the incident happened. She asked the Court to consider that she is a mother of three children aged 15, 12 and 1. She also bears the burden of supporting her father who is 75 years old and is sickly. She begged for forgiveness from the family of the Deceased.

5. As pointed out above, the circumstances in which the offence was committed point to a person who was determined to kill the Deceased. She specifically travelled to the Deceased’s place of work armed with a knife hidden in her waistband indicating a high level of planning and intent. To this extent, Mr. Chigiti is right that the offence should attract the strongest opprobrium from the society through a stiff custodial sentence. However, I note the following mitigating circumstances:

- a. The Accused Person is demonstrably remorseful;
- b. She is a first offender;
- c. She is a mother of three children of tender years.

6. Carefully considering all the factors in this case including comparable cases where the brutality of the attack was higher and the level of premeditation more significant, and the mitigating factors outlined above, I consider a sentence of fifteen (15) years appropriate for the offence. That sentence will meet all the objectives of sentencing in this case including sending the society’s message about the offence as well as rehabilitation of the Accused Person considering her age and family situation. In coming up with this sentence, I have already taken into account that the Accused Person was in remand for a period of a little more than two years during the pendency of this case.

7. The upshot is that after considering all the factors, I hereby sentence the Accused Person to imprisonment for fifteen (15) this homicide.

8. Orders accordingly.

Delivered at Nakuru this 20th day of September, 2018

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JOEL NGUGI

JUDGE