

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO. 16 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

V C.....ACCUSED

RULING ON SENTENCE

1. The accused, V C, was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 20th day of June 2017 in Bureti sub-county within Kericho County, she murdered B C. The accused pleaded not guilty to the offence and the matter was set for trial.
2. However, pursuant to a plea agreement entered into between the accused and the state, the accused pleaded guilty to the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code, and was convicted of the said offence on her own plea of guilty.
3. The facts of the case as presented by Learned Prosecution Counsel, Mr. Ayodo, are that on the material day at around 4.00 p.m., the deceased was at home with her mother, the accused. She developed stomach problems and started vomiting. The neighbours inquired from the accused what was wrong with the deceased but she just said the deceased had stomach problems. The deceased was then rushed to Sotik Hospital by her uncle who was also a neighbour, together with the accused. She was pronounced dead on arrival at the hospital.
4. The incident was reported to the police and investigations were launched. A post mortem was conducted on the body of the deceased at Kapkatet District Hospital. The post mortem results showed the cause of death of the deceased was organophosphate poisoning. The post mortem report was produced as exhibit 1.
5. In the course of investigation, an insecticide bottle labelled diazonal chemical, which was half full, was recovered outside the house of the accused. Examination of the bottle showed that it was recently bought since it was clean and had not been subjected to any harsh conditions. The accused could not give any satisfactory explanation for having an insecticide outside her house.
6. However, further investigations revealed that the accused had come with insecticide from Sotik Trading Centre. The deceased, a child aged 5 years, had consumed the said substance. It was not clear whether it was with the knowledge of the accused because she failed to give a satisfactory explanation. The accused was later arrested and charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. Pursuant to the plea agreement, the charge was reduced to the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code.
7. In mitigation, Mr. Koske for the accused pleaded that the accused was a 27-year old mother of 3 children aged 10 and 4 years while the youngest was 6 months old at the time of the plea. The deceased had been her second child. The accused was remorseful and apologetic for not taking good care and diligence which led to the deceased consuming the insecticide. Mr. Koske informed the court that the accused had bought the insecticide to get rid of bed bugs and fleas in her dwelling house, but unfortunately, had kept the insecticide on the table, where the deceased child took it without her knowledge. The accused was undertaking to take care in future to avoid such a catastrophe. She prayed for leniency and for a non-custodial sentence to enable her take care of her remaining children who are currently under the care of her mother.
8. In a social inquiry report filed in court on 25th September 2018, the Probation Officer, Kericho notes that the accused is a single mother who was struggling to raise three children. She is described as hardworking and responsible, but has had challenges raising the children because she is the daughter of a single mother who does not have a place to call home and is dependent on the charity of her younger brother. The accused was surviving on menial jobs, having dropped out of school, and was struggling to pay rent for the house she had rented at the shopping centre. The larger family was willing to support the accused and to settle her and her mother.
9. What emerges from the social inquiry report is a picture of a single woman who had three children, and another on the way. She is the daughter of a mother who is also single and homeless, with four children including the accused. The family appears to have come to the realization that the conditions in which the accused and her mother were living were not conducive to a good family life in which the accused could take care of her children. They had resolved to give or acquire land for the accused and her mother to establish a home.
10. What happened to the deceased is not clear from the facts on record, but the prosecution was satisfied that the accused did not intentionally cause the death of the deceased. It may have been that she bought the insecticide to get rid of bedbugs as was stated on her behalf in mitigation, and the child, with the curiosity of children, consumed it. The absence of an intention to take away the life of the deceased, however, does not take away the fact that the accused was negligent in leaving a poisonous substance where a young child could find it, with tragic consequences.
11. The accused has been in custody for a year and 3 months since her arrest. She has been in custody with her youngest child. I believe she

has had sufficient time to reflect on her actions, and on the need to take better care of her children.

12. I accordingly sentence her to imprisonment for the time already spent in custody, and on probation for a term of three years, to be supervised by the Probation Service, Kericho.

Dated Delivered and Signed at Kericho this 3rd day of October 2018

MUMBI NGUGI

JUDGE