

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 53 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

EUNICE KAVAE SOHELO.....ACCUSED

RULING ON SENTENCE

Eunice Kavae Sohele the accused in this case is accused of killing of ROO contrary to Section 203 as read with Section 204 of the Penal Code on 25th June 2016 at Gathecha area within Ruaraka in Kasarani Sub-County within Nairobi County. She denied committing this offence when the plea was taken on 12th July 2016. The case was set down for hearing. However the case did not proceed to hearing because the prosecution and the accused entered into a plea bargain agreement in which the accused accepted to plead guilty to a lesser charge of manslaughter. The court accepted the plea bargain necessitating the filing on 15th October 2018 of fresh information for the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The accused is the mother of the deceased and at the time of his death the deceased was aged about 5 years.

On 15th October 2018 this court recorded took the plea for the offence of manslaughter to which the accused pleaded guilty. The facts of the case were presented to the court to the effect that on the 25th June 2016 the accused who lived with her small child ROO, the deceased, whipped him in a bid to discipline him leading to his death. The body of the child was found lying at the entrance of their residence with wounds on the head and the face and bloodstains having been wiped off. Police from Ruaraka Police Station were informed and visited the scene. They found a bloodstained knife hidden in a bucket and bloodstained clothes soaked in a basin in the bedroom. The accused was found wearing a bloodstained skirt. Blood stains were also found on the door and walls in the bedroom. The accused was arrested and charged with murder, which has now been substituted to manslaughter. The body of the deceased was examined on 29th June 2016 and the cause of death confirmed to have resulted from head injury due to blunt force trauma.

The accused accepted these facts as presented to be true. This court convicted her on her own plea of guilt. Before pronouncing the sentence this court took the mitigation of the accused and called for a pre-sentencing report. In mitigation through her lawyer, Ms Jepkorir, the accused told the court that she is aged 26 years and that she has been in custody for 3 years. She said that the deceased was the only child she had; that she is an orphan who was brought up by her grandmother who is sickly. She said that she had been taking care of her grandmother before she was arrested. She told the court that she has undergone counseling courses and salon courses and urged that this court gives her another chance at life and a non-custodial sentence.

The prosecution did not have previous criminal records in respect of the accused and asked the court to treat her as a first offender.

I have read the probation report. It confirms the circumstances leading to the death of the deceased and the social circumstances under which the accused lived. I have taken into account both the report and the mitigation of the accused. It is unfortunate that a mother would turn her anger, whatever the circumstances of live, on her child and kill him. It seems that the accused has deep seated emotional issues that require counseling. I have taken into account that the accused has been in custody since July 2016 a period of over 3 years. By admitting the offence the accused has saved this court judicial time and the tax payer unnecessary expenses. She will have to live with the emotional pain of losing her child through her own actions and this is quite a burden that will haunt her for the rest of her life. In my considered view, justice will be served by having the accused spend some time in custody before being supervised by the probation officers. Having taken into account that she has been in custody for over three years pending the hearing of this case I hereby sentence her to one (1) year imprisonment and subsequent two (2) years' non-custodial sentence under the supervision of a probation officer. During her term under the supervision of a probation officer the accused shall undergo counseling. She is hereby informed of her right of appeal within 14 days from today's date. Orders shall issue accordingly.

Delivered, dated and signed this 8th November 2018.

S. N. Mutuku

Judge