



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 4 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**AKW.....ACCUSED**

**RULING ON SENTENCE**

The accused in this case, AKW, was initially charged with murder contrary to section 203 as read with section 204 of the Penal Code. The offence is alleged to have been committed on 2<sup>nd</sup> December 2017 in Dagoretti Sub-County within Nairobi County. The victim is AW. The accused pleaded not guilty to the charge. Before the hearing of the case commenced, the prosecution and the defence entered into an agreement for plea bargain for the lesser charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The agreement was signed by the parties and on 12<sup>th</sup> November 2018 the accused pleaded guilty to manslaughter. He also admitted the facts of the case as presented by the Prosecution Counsel. This court consequently convicted the accused for manslaughter.

The facts of the case are that the deceased and the accused were living together as man and wife. They disagreed over claims by the deceased that the accused was having an affair with other women. The deceased is said to have gone to the place where the accused worked and started shouting at him accusing him of infidelity. The accused pulled her away and took her home. The argument escalated. The accused picked a knife and stabbed the deceased on the chest. Good Samaritans helped and took her to Bethany Medical Clinic where first aid was administered. She was referred to Kenyatta National Hospital but died on the way to hospital. Her body was transferred to the City Mortuary and a report of her death made at the Kilimani Police Station. The accused was arrested and charged with this offence. The body of the deceased was examined on 14<sup>th</sup> December 2017 by Dr. Peter Muriuki Ndegwa who formed the opinion that the deceased had died as a result of heart injuries due to a penetrating sharp force trauma. The accused was taken for mental assessment and thereafter arraigned in court to face murder charges now reduced to manslaughter. The post mortem report and the mental assessment report were tendered as Ex. 1 and Ex. 2 respectively.

The accused confirmed these facts as true. This court found him guilty on his own plea and convicted him for manslaughter. The Prosecution Counsel informed the court that the accused did not have previous criminal records and therefore this court treated the accused as a first offender.

In mitigation on behalf of the accused, Mrs. Kinyori, learned counsel submitted that the accused is aged 27 years while the deceased was aged 38 years; that they met when the accused was struggling for livelihood and the deceased took him in; that they started living together after developing an intimate relationship; that they got one child and that they would occasionally quarrel due to the age difference and drinking issues. She submitted that the deceased had other children who lived with her relatives but the children would occasionally live with them. She submitted that on the material day they quarreled and the deceased insulted the accused who lost his temper and stabbed the deceased. Mrs. Kinyori submitted that the accused is an orphan who was brought up by a relative and that he did not get proper education after dropping from school at an early age to fend for himself. She submitted that the accused surrendered to the chief after he stabbed the deceased; that he has been a disturbed person and has undergone treatment at Mathare Hospital after being found unfit to stand trial. She submitted that the accused is remorseful and pleads for mercy and pardon and seeks non-custodial sentence.

This court has called for a probation report before sentencing. It was filed in court on 4<sup>th</sup> December 2018. I have read it and I have noted the circumstances facing the accused at the time this offence was committed. I have noted that the accused had mental challenges due to abuse of alcohol and drugs. I note that an uncle of the accused is willing to take in the accused and assist in his re-integration into the society. It seems to me that the accused has been a victim of the circumstances of his birth and rejection by family. His alcoholism and drug substance abuse could have been due to the circumstances facing him. He also seems to have suffered mental instability on and off.

I have considered the circumstances of this case and it is my considered view that justice will be served by imposing a non-custodial sentence. The accused is hereby sentenced to three years of probation supervision during which time he will be counseled. This way, his family, the uncle who is willing to assist, can pursue any medical treatment that may be required. I make orders accordingly. The accused has been informed of his right of appeal within 14 days from today's date.

**Delivered, signed and dated this 13<sup>th</sup> day of December 2018.**

**S. N. Mutuku**

**Judge**