

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

HIGH COURT CRIMINAL CASE NO.2 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

IRENE CHEMUTAI BOROR.....ACCUSED

SENTENCE

1. The accused, Irene Chemutai Boror, was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The facts of the case were that on the 6th day of January 2016 at Tulwabmoi Sub-location, Kericho County, she murdered Linner Koros.

2. The accused pleaded not guilty to the charge. Thereafter, the accused offered and the state accepted her offer to plead to the lesser charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code. Pursuant to a plea bargain agreement dated 16th November 2016, the accused pleaded and was convicted on her plea to the charge of manslaughter. The state indicated that the accused was a first offender.

3. In mitigation, it was pleaded on behalf of the accused by her Counsel, Mr. Sigira, that the accused is 46 years old. She is a widow who had lost her husband in 1998 and is therefore the sole bread winner for her six children, five of whom are school going and three of whom are still minors. She was remorseful and sorry about what had happened as she did not intend to kill the deceased. She had in fact tried to assist her but in vain. She prayed that she be given a non-custodial sentence.

4. The facts of the case as presented to the court by Ms. Keli are that the accused and the deceased were friends and neighbours residing in Tulwamoi sub-location, Toroton location in Kipkelion Sub-location within Kericho County. The deceased had been having a love affair with the son of the accused without her knowledge. On 6th January 2015, the deceased had visited the accused at her compound where they spent time taking the local brew known as busaa. At around 1.00 p.m., the accused left to drive her cattle home from a nearby field where they had been grazing.

5. She returned but did not find the deceased where she had left her. She called out her son's name to inquire whether he had seen the deceased leaving the homestead. There was no response from her son so she went to his house and after knocking on the door and receiving no response, she decided to open the door to find out if her son was inside the house. Upon opening the door, she found her son and the deceased in the act of canal knowledge. The accused's son was furious that his mother had entered his house and interfered with his love relationship with the deceased, and he turned on her and beat her up, so she left her son's house and ran outside.

6. Shortly thereafter, the deceased also left the accused son's house and ran outside. The accused and deceased started quarreling and fighting and the accused picked up a stone from the ground and hit the deceased twice on the head. The deceased fell down, bleeding profusely, and lost consciousness. The accused tried to assist the deceased but the deceased was not responding. The deceased then fled the scene, but she later surrendered herself to the area chief who escorted her to Kokwet AP Camp where she was escorted to Fort Tenan Police Station.

7. The body of the deceased was moved to St. Vincent de Paul Hospital in Muhoroni where a post mortem was conducted on the deceased's body on 8th January 2016. The cause of death was established

as severe head injury as a result of severe head trauma. The accused was examined on 8th January 2016 and was found to be fit to stand trial. Both the post mortem report and the report on the mental capacity of the accused were produced in evidence.

8. A social inquiry report was prepared in respect of the accused in this matter by the County Probation Officer, Kericho. The report is undated but has the court date stamp of 30th December 2016. In the report, the Probation Officer indicates that the respective families of the deceased and the accused have started traditional steps for reconciliation, and that the family of the deceased has forgiven the accused, who is remorseful.

9. The court appreciates the important place that reconciliation plays in families and society, and that the accused is remorseful. However, this does not change the fact that a human life was lost because the accused was angry that her son, an adult who, according to the Probation Officer's report, is 28 years old, chose to have an affair with the deceased.

10. In the circumstances, I believe that a custodial sentence is merited given the facts of this case. It will give the accused time to reflect on her actions, and to value human life. I therefore sentence the accused to a term of imprisonment for three years.

11. The right of the accused to appeal against the sentence within 14 days has been explained.

Dated, Delivered and Signed at Kericho this 1st day of February 2017.

MUMBI NGUGI

JUDGE