



REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL CASE NO. 3 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

PMK.....ACCUSED

SENTENCE

PMK (hereinafter referred to as “the Accused”), was initially charged with the offence of murder contrary to section 203 and section 204 of the Penal Code. An offer was made subsequently by the Defence counsel to plead to the offence of manslaughter, which offer was accepted by the Prosecution. The Accused thereafter on 1st March 2017 charged with the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The particulars of the offence were that on 31st December 2015 at Kyanzavi Division within Machakos County, she unlawfully killed Albanus Muema.

On the fateful day, being 31st December 2015 at 6 pm, Albanus Muema who is since deceased (hereinafter referred to as “the Deceased”) went to the Accused’s home. The Deceased and Accused had previously been in a romantic relationship which had ended. The Deceased met the Accused’s mother, AW and the Accused’s two sisters SMK and JM. He was welcomed to the home by Accused’s mother but he refused to answer and stood under a tree. The Deceased then asked where the Accused was, and he was told she had gone to visit a friend called Mary Wanja Mutuku who did not live far away. The Deceased told the Accused’s mother that the Accused was disturbing him and causing him problems at home, as he was now married, by calling him often and sometime on a private line.

The Deceased was given a seat to sit down and the Accused’s sister JM was told to call the Accused. When the Accused came back home her mother asked her why she was calling the Deceased, which the Accused denied. The deceased then informed them of the times the Accused had called him. The Accused and the Deceased got into an argument, whereupon the Deceased became annoyed and slapped the Accused who fell down. They then started fighting, which is when the Accused took a knife and stabbed the Deceased on the neck.

The Accused’s mother and sister started screaming and neighbors came. The Deceased held his neck which was bleeding and fell down. The Accused ran to the roof of their house and tried to kill herself, and the neighbors restrained her. The police from Donyo Sabuk then came and arrested the accused.

The body of the Deceased was taken to Donyo Sabuk mortuary. On 7th January 2016 the uncles of the deceased John Muasya and Paul Muteti went to the Donyo Sabuk mortuary to identify the Deceased’s body. The post mortem on the body was done by Dr. Ndegwa who filled and signed a post mortem report. The report stated the cause of death was exsanguination due to injuries caused by a stab wound.

The Accused pleaded guilty to the offence of manslaughter and admitted the above-stated facts that were narrated to the Court by Ms. Mogoi, the learned Prosecution counsel. Ms Mogoi also produced the post-mortem report as the Prosecution's Exhibit 1, and sought leave to file a victim impact statement. The Accused was convicted of the offence of manslaughter on her own plea of guilty, and I am now called upon to pass sentence bearing in mind that the maximum sentence for the offence of manslaughter is life imprisonment under section 205 of the Penal Code.

Ms Gichuki, the learned Defence counsel, sought for leniency in mitigation due to the fact that the Accused is a young lady aged 19 years of age, and was barely 17 years old when she was charged with the offence of murder. Further, that at the time of his death the Deceased was aged 24 years and had been in an intimate relationship with Accused two years before, when the Accused was about 15 years and the deceased aged 22 years.

The Accused's counsel stated that the Accused joined Form 1 at Kayatta Secondary school in 2014, and that her relationship with the Deceased continued. That in 2015 the Deceased got married, but continued to see the accused secretly, and that when the love affair came into light, the elders of the village intervened and it was reached that the relationship should come to an end. The Deceased however continued to pursue the Accused who was 7 years younger. It was averred that this caused the accused to flee from home and seek employment as a house help in Makueni county.

On 31st December 2015, the Accused travelled home from Makueni for new year festivities. She shared a meal with her family and joined her childhood friend Mary Wambua at the latter's home. She was then called by her sister to back home to hear what the Deceased had to tell her. The Accused counsel contended that from the statements facts narrated in Court it is clear that the Deceased did not come in good faith and had the intentions of harming the accused, and that he was clearly the aggressor.

It was submitted that the accused is remorseful, she regrets the events of that day and her life has been ruined as she bears a criminal tag. She also regrets the death of her friend. Further, that contrary to what is in the victim impact statement, the accused has sent her mother and family and elders to seek forgiveness from the deceased family and they have refused to listen to them. In addition, that the Accused has been in prison for 1 ½ years and she has paid for the offence she committed. The Accused's counsel prayed that the court considers the circumstances of the case and a non-custodial sentence, as the Accused is a young girl of school going age, and still has a chance of going back to school and rebuilding her life.

The Prosecution filed a victim impact statement in Court on 9th March 2017, which was sworn by Colletta Nduku Kakene, the Deceased's biological mother. The Court also called for a pre-sentencing report from the Probation Service, which report was filed in Court on 7TH April 2017. It was noted from both reports that the Accused's home environment is hostile, with the Deceased's mother indicating that the Accused's family continue to mock and despise them, and did not offer any condolences for the loss of their only son or take part in his funeral and burial arrangements. She in addition stated that her family is still bitter and shocked about the death of their son who was active in business and used to assist the family, and it was their wish that the Accused serves a custodial sentence.

The probation report echoed the sentiments of the Deceased family, and it was noted that intervention by the community has been difficult because of the stand taken by the deceased's family and no reconciliation has taken place between the deceased's family and that of the Accused, despite the Accused's mother sending delegations to the Deceased's family three times. In addition, that there is a bitter rivalry between the two families who are not on talking terms, and there was a report of a confrontation between members of the two families that was reported to the police.

On the part of the Accused, the report indicated that she appears not to feel anything about the death of the Deceased terming it as an accident, and had disappeared from home before the incident without informing her family, which poses a risk of absconding. The report concludes that because of the volatile situation at the Accused's home, there is a security risk to the Accused, and she is not a suitable case for a non-custodial sentence.

I have considered the facts of the case and the circumstances in which the deceased's death occurred, as well as the mitigation, victim impact statement and pre-sentencing report by the Probation Service. It is evident that while the Accused may have been provoked and may not have had the intention of killing the Deceased, she would have known that her act of stabbing the Deceased in the neck would cause him grievous harm. In the end it did not just harm him but resulted in his death. The offence for which the Accused has been convicted cannot therefore go unpunished in the interests of justice.

The Court also notes in this regard from the victim impact statement and pre-sentencing report that the Accused's home environment would not be suitable for her rehabilitation, and she may gain more from counseling and getting an education and skills while in custody.

I therefore find that a non-custodial sentence will not be appropriate in the circumstances of this case, and taking into account the time the Accused as spent in custody, I accordingly sentence the Accused to four (4) years imprisonment.

Right of Appeal explained to the Accused.

Orders accordingly.

DATED AND SIGNED AT MACHAKOS THIS 4TH MAY 2017.

P. NYAMWEYA

JUDGE