



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

HCCR NO.14 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

JANE CHEMNG'ENO TANUI.....ACCUSED

SENTENCE

1. Jane Chemng'eno Tanui 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 21st of June 2015 she murdered Linnet Chebet. The accused pleaded not guilty to the offence and the matter was scheduled for trial. However, pursuant to a plea bargaining agreement entered into between the accused and the state dated 8th May 2017 and formally recorded in court on 9th May 2017, she was convicted on her own plea of the lesser offence of manslaughter.

2. The facts of the case as presented to the Court and to which the accused pleaded were as follows. The accused was a casual labourer at Unilever Company. She resided on the company's premises at Kapkoren Estate within Kericho County with her husband, Bernard Langat, and their twelve year old son. On the 21st of June 2015, at around 8.00 p.m., the accused was in her house with her son. She prepared supper which they ate, and she kept aside some food for her husband to eat when he arrived home. She then retired to bed as she was tired from the day's work. As her son was to wake up early for school, he also went to sleep.

3. At around 9.30 p.m. the accused's husband returned home and found her asleep. He woke her up and informed her that he had come with a visitor. The accused woke up to go outside the house to confirm who this visitor was. She got to the living room and found a woman, who was unknown to her, seated on the sofa. The accused greeted the woman and asked her husband who their visitor was. The woman arrogantly introduced herself as the accused's husband's girlfriend. She further told the accused that she and the accused's husband had a child together and they intended to settle down together. That was why, according to the woman, she had accompanied the accused's husband home as they intended to bring up their child together.

4. The accused was very shocked at the news and she requested the woman, the deceased in this case, to leave her house peacefully. The deceased became disrespectful and started insulting the accused telling her that she was unable to take care of her husband and that he would leave the accused to marry the deceased.

5. A heated argument ensued between the accused and the deceased. The accused took the deceased's hand and tried to drag her out of the house, and the deceased turned and slapped the accused on the face, insisting that she was not leaving. The two started fighting and the accused's husband fled the scene to an

unknown destination. The accused, who was highly irritated, suddenly reached for a kitchen knife which was on a table and stabbed the deceased on the left side of the chest. The deceased tried to walk out of the house but she collapsed at the door as she was bleeding heavily. She lost consciousness as the accused screamed for help. Neighbours responded promptly and tried giving first aid to the deceased.

6. Officers from Kapkorech AP Camp were informed of the incident and they rushed to the scene. The deceased was rushed to Kapkorech Health Centre where she was pronounced dead on arrival. Her body was moved to Kericho District Hospital Mortuary to await a post mortem. A post mortem was conducted on the 25th of June 2015 by Dr. Edwin Kosgey. He established that the deceased died due to hyporelemia secondary to laceration of pulmonary artery which led to left haemothorax and haemopericardium.

7. The accused was arrested and later charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code which has now been reduced to manslaughter contrary to section 202 as read with section 205 of the Penal Code pursuant to the plea agreement with the state. The state through Learned State Counsel indicated that it had no previous records with respect to the accused, and she could be treated as a first offender.

8. In mitigation, Learned Counsel, Ms. Kitur, submitted that the accused was remorseful and was seeking forgiveness. That she was the mother of two school going children who are now being taken care of by the accused's mother as they were left by the accused's husband, who has since re-married, after the commission of the offence before the Court. That the accused had no intention to commit the offence but that the offence was provoked by the deceased who spoke arrogantly to the accused and started the fight by slapping the accused despite the efforts of the accused to order the deceased to leave her house peacefully. The accused pleaded for a non-custodial custodial sentence.

9. A pre-sentencing report was prepared by the Probation Office, Kericho. In the said report, it is noted that the accused was provoked and was asking for forgiveness. It was further noted that the accused and her husband had been having domestic wrangles, and that her husband had had many illicit affairs to the extent of brining his girlfriend home. It is further noted that the accused's husband and the deceased contributed to the emotions that led to the commission of the offence with which the accused is charged.

10. I have considered the facts of this case and the circumstances that led to the death of the deceased. I note from the facts before me that the accused was asleep in her house, and that the deceased came in with the accused's husband and started the fight that culminated in her death, her so-called boyfriend having cravenly scuttled out of the way and left the women to fight each other, resulting in the death of one and the incarceration of the other.

11. If being a dastardly cur, the only term that seems to me to adequately describe the accused's husband, was a cognisable offence, the accused's husband should be facing charges. Unfortunately, it is not. One woman is cold in her grave. The other has been languishing in custody for two years. And the author of all the trouble, the accused's husband, has moved on and married another wife.

12. One is not without sympathy for the accused. It is unfortunate as she stated in her mitigation, that she was provoked by the acts of the deceased in slapping her, and that she responded in a manner that was inordinate in the circumstances, leading to loss of life.

13. I note that the accused has been in custody since her arrest on 21st June 2015, a period in excess of two years. Given the circumstances of this case, I believe that the period that the accused has spent in custody is sufficient, and that a non-custodial sentence is therefore merited. Consequently, I sentence the accused to probation for a period of two years, to be supervised by the Kericho Probation Office.

14. It is so ordered.

Dated Delivered and Signed at Kericho this 19th day of July 2017.

MUMBI NGUGI

JUDGE