

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 9 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

EDITH SAYO LWENYA.....ACCUSED

SENTENCE

Edith Sayo Lwenya, the accused, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. Particulars are that on the 11th day of January 2015 at about 10.30am at Maringo Estate within Nairobi County she murdered Anthony Kamau Ndegwa. The accused denied the charge when she appeared in court on 29th January 2015 and the case was listed down for hearing on 2nd and 3rd November 2015. Hearing did not commence as anticipated. The case was adjourned to be heard from 6th to 9th June 2016. On 6th June 2016 this court was informed that the defence had offered a plea bargain on a lesser charge of manslaughter. Parties were allowed more time to prepare the documentation and finalize the discussion on the same. This was done and on 16th June 2016 this court took the accused through the legal requirements in a plea bargain specifically sections 137A to 137M of the Criminal Procedure Code, all inclusive.

The information and all its particulars were read out to the accused persons in English Language which the accused fully understood and chose to use in these proceedings. She pleaded guilty. The facts of the case are that the accused and the deceased were lovers and in the morning of 11th January 2015 the accused visited the house of one Jane Adola whom she suspected to be having an affair with her lover the deceased. She wanted to confirm if the deceased had left his clothes there. She collected the clothes and returned to her house. At around 10.00am the same day the deceased went to accused's house to pick his clothes. The accused did not allow him in but took his clothes to him at the gate. They exchanged bitter words and the accused returned to her house. The deceased jumped over the fence and followed the accused inside her house and started beating her. The accused picked a kitchen knife and stabbed the deceased on the chest. The deceased fell down bleeding. The commotion attracted neighbours who rushed the deceased to Jamma Hospital where he died while undergoing treatment. The accused reported the matter at Jogoo Police Station where she was detained. She was examined and found mentally fit to stand trial. The cause of death, according to the post mortem report (Ex. 1) was confirmed to be due to chest injury due to penetrating trauma.

This court convicted the accused on her own plea of guilty and after she confirmed that the facts as presented were correct. Her legal counsel mitigated before sentence that the accused was very remorseful for having stabbed the deceased and causing his death; that she acted in self defence; that she paid for the transport to take deceased to hospital; that she is 41 years old with two children (sons) aged 18 and 15 years respectively who live with her brother; that her parents are elderly; that during her incarceration pending this trial she has studied and obtained a certificate from Kituo Cha Sheria in paralegal studies and a diploma in theological studies as well as undertaking a course in psychology. Counsel mitigated that the accused prays for leniency and seeks non-custodial sentence to enable her fend for her two children and her elderly parents.

This court called for a pre-sentence report from the probation officer. This report was filed on 8th July 2016. I have read it and noted that the accused does not have previous convictions as far as the probation

officer was able to find out. It also shows that the family of the deceased has not come to terms with his death and is still hurting from his death and is not ready to forgive the accused.

I have considered the report and the circumstances giving rise to this offence. From the presented facts and the report it is clear that the act of stabbing the deceased was not premeditated. I have also taken into account that the accused is remorseful for what happened. It is however not lost to this court that a life was lost and the accused must take responsibility for this crime. Given that the accused was acting in self defence although she used excessive force and given that she has been in custody for one year, this court hereby sentences the accused to serve four (4) years in jail. Her right to appeal within 14 days from today's date has been explained to her. Orders shall issue accordingly.

Dated, signed and delivered this 13th day of July 2016.

S. N. Mutuku

Judge

In the presence of:

Mr. Okeyo for the prosecution

Mr. Mutitu for the accused

Ms Edith Sayo Lwenya, the accused

Mr. Daniel Ngumbi, court clerk