



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CRIMINAL CASE NO. 29 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

EUNICE KARIMI JOHN..... ACCUSED

RULING

1. The accused Eunice Karimi John 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 were that on 17th February 2013 at Riruta Location, Dagoretti District within Nairobi County murdered Gerald Ndegwa Njogu. The deceased was her husband of 10 years with whom she had 2 children.
2. The accused took plea on 6th march 2013 and pleaded not guilty. When the matter came up for trial on 29th June 2015, the defence counsel informed the court that the accused wished to plead guilty of a lesser charge of manslaughter. Subsequently, the accused and the State commenced plea negotiations culminating in the signing of a plea agreement which was filed in court on 21st December 2015. The said agreement was later rejected by the court (Mutuku J.) on 30th December 2015 when the accused disputed the facts.
3. The parties subsequently entered fresh negotiations and drew a new agreement dated 19th January 2016. The accused took plea on the substituted charge of manslaughter contrary to section 202 as read with Section 205 of the Penal Code. During proceedings before Wakiaga J. on 28th January 2016 it came to the attention of the court that the parties had proceeded on the basis of the repudiated agreement thereby rendering the whole proceedings void. In consequence thereof the court directed that the case be heard before a different court in accordance with Section 137 of the Criminal Procedure code.
4. A new plea agreement between the parties was filed in court on 8th September 2016. The accused took plea and pleaded guilty to the lesser charge of manslaughter before me on 14th September 2016. Owing to the history of the plea negotiation in this case as summarized above, the court took keen precaution to ascertain that the process was voluntary and that the accused understood her rights under the law.
5. According to the facts read by the prosecutor and accepted by the accused, the accused (Gerald Ndegwa Njogu) and the deceased though married, had been separated since December 2012. On the 17th February, 2013 Gerald Ndegwa Njogu met the accused person and both proceeded to the accused person's house which was situated along Kahuhu Road in Riruta to discuss issues relating to their children's school fees. While still in the accused person's house on the material day at about 6p.m. an argument ensued between the two and they fought. The accused person then took a knife and stabbed Gerald Ndegwa Njogu on the right side of the neck. She then left her house for Riruta Police Station to

report the incident. On the way she threw away the said knife. After disposing off the knife the accused person presented herself to the Riruta Police Station where she was arrested. The knife was subsequently recovered by the Police officers and kept in safe custody. Gerald Ndegwa Njogu succumbed to the fatal injuries while still at the scene of crime and his body was later transferred to the City Mortuary. Post mortem to establish the cause of his death was conducted on the 26th February, 2013. It established that he died due to Hemorrhage due to a stab wound. On the 27th February, 2013, the accused person was presented to the Police Surgeon at Nairobi Area for mental assessment. The Police Surgeon confirmed that she was fit to stand trial. The accused person was initially charge with the offence of Murder on the 21st February 2013 which has subsequently been reduced to that of manslaughter.

6. The accused was convicted on her own guilty plea on 14th September, 2016 and the court proceeded with the sentencing hearing. In mitigation, Mr. Nyachoti for the accused told the court that the accused was remorseful and was also sickly. That she had reformed and wished to be considered for a non-custodial sentence. Mr. Okeyo for the prosecution asked the court to treat the accused as a first offender. With that submission, the court called for a pre-sentence probation report. The said report was filed in court on 31st October 2016.

7. The probation report in summary shows that both the accused and the deceased had a history of alcohol abuse and frequent domestic violence. The report further shows that the accused has class 4 level of education and no skill to rely on to earn a living. It also shows that accused's grandmother has offered to support her in her rehabilitation should she be granted a non-custodial sentence.

8. The purpose of sentencing is primarily twofold. Firstly, it is to express society's indignation of the unlawful conduct of a convicted person; and secondly, to aid in the reformation and rehabilitation of the offender. In the present case, I have considered the mitigation by the accused that she is now a reformed person and is remorseful for the offence. I have also taken into consideration that she has saved judicial time by making a plea offer. I have also considered that she has 2 children who are now in the care and custody of the deceased's mother. All these are circumstances which favour consideration of a non-custodial sentence.

9. A non –custodial sentence is however appropriate where a custodial sentence would serve no or limited useful purpose and where society is likely to benefit from the release of the offender. It is appropriate where the offender is deemed to have been sufficiently rehabilitated. In the present case, there is no evidence either in the accused's own mitigation or in the probation report that the accused has overcome her two main challenges namely propensity to violence and alcohol abuse. There is also ample evidence that the victim's family is yet to accept the offender back home and assist in her total rehabilitation. These are factors that militate against the grant of a non-custodial sentence.

10. Having taken all factors into consideration, and the period that the accused has been in custody, I sentence the accused to serve 3 years imprisonment during which period she should be trained in an appropriate craft or industry to aid in her further rehabilitation upon completion of the prison term.

Orders accordingly.

Ruling dated, signed and delivered at Nairobi this 10th day of **November**, 2016

R. LAGAT-KORIR

JUDGE

In presence of:

.....: Court clerk

.....: Accused

.....: For accused

.....: For State