



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO 29 OF 2014

REPUBLICPROSECUTOR

VERSUS

JOSEPHINE MUHATIAACCUSED

SENTENCE

1. The Accused **JOSEPHINE MUHATIA** was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code the particulars of which were that on the 10th day of April, 2014 at Kawangware Soko Mjinga in Dagoretti District within Nairobi County murdered *Particulars withheld*.
2. He pleaded not guilty to the said charge and by a Plea Bargain Agreement dated 4th October, 2016 entered into between the accused and the prosecution and accepted and recorded by the court the said charge was reduced to manslaughter contrary to Section 212 as read with Section 205 of the Penal Code to which the accused pleaded and was convicted on her own plea of guilty.
3. The facts leading to the commission of the offence herein were that the accused was staying with the deceased who was her stepchild having been brought by her husband from their rural area. On the material day a neighbour reported to the accused who was preparing vegetables that the deceased had lost the money which was for purposes of buying unga and in the process the accused threw the knife she was using to cut the vegetables at the deceased on the knee. The accused rushed to the house of one Nancy upon realizing what had happened for assistance and they rushed the deceased to the hospital where he died while undergoing treatment. In support of these facts the prosecution produced the postmortem report as PExh. No. 1 confirming that the cause of death was haemophasic shock secondary to assault.
4. In mitigation the accused through Mrs. Kinyori, her advocate submitted that she did not intend to harm the child and that she committed the offence while a minor aged 17 years having been married in a marriage where she underwent a lot of trauma and financial challenges and was under a lot of stress at the time. The prosecution submitted that the accused should be treated as a first offender.
5. To assist the court in passing an appropriate sentence I ordered for pre-sentencing report which confirm that the accused dropped out of school at class seven (7) when she met one *Particulars withheld* who married her though a minor at the time before taking her to his rural area and that the victim *particulars withheld* then aged 8 years was a child of the accused's husband from a previous marriage whom he brought to live with them at a time when the accused was nursing a toddler of her own aged two (2) years who has been with her in custody.

6. In a supplementary report dated 31st October, 2016 the probation officer has recommended that the accused be admitted to institutional rehabilitation at Siaya Girls Probation Hostel which will accommodate her together with her child for a period of one year and two years community service during the period which she will undergo guidance and counseling, life skills and undertake a course in hairdressing towards positive behavior change.

7. I have taken note of the mitigation by the accused person and in particular her anger at the loss of the only money with which she was to buy unga for the day which brings to mind the biblical story in 1 Kings 17:12 where the widow said:-

“As the Lord thy God liveth I have not a cake but a handful of meal in a barrel and a little oil in a cruse and behold I am gathering two sticks, that I may go in and dress it for me and my son, that we may eat it, and die...”

8. The accused actions here are as a result of breakdown in our social values and social support and networks. She dropped out of school in class seven, cohabited with a man who offered her very minimal support in addition to burdening her with the care of his 8 year old child from a previous marriage. She was married as a second wife. The said husband has since disappeared and her mother’s whereabouts are unknown while her father is of very little help. It is therefore this background that should be blamed for the commission of the offence herein.

9. I therefore find and hold that the accused should benefit from non-custodial sentence during which she shall go through rehabilitation to enable her reform and become a better person. I therefore sentence the accused to institutional rehabilitation at Siaya Girls Probation Hostel for a period of One (1) year and thereafter probation’s service order for a period of two years under the probation office in-charge of Nairobi and it is so ordered.

DATED, SIGNED and DELIVERED at Nairobi this **9th day of November, 2016.**

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J. WAKIAGA

JUDGE

In the presence of :-

Miss Mwaniki for the State

Mrs. Kinyori the Accused

Accused present

Court clerk Tabitha