

REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

CRIMINAL CASE NO. 1 OF 2013

BETWEEN

REPUBLIC PROSECUTOR

AND

MOSES OCHIENG MATINDE 1ST ACCUSED

JOSEPH ODHIAMBO OKEYO 2ND ACCUSED

EVERLYNE AKINYI MATINDE 3RD ACCUSED

SENTENCE

1. On 30th April 2015, I found **EVERLYNE AKINYI MATINDE** guilty of manslaughter contrary to **section 202** as read with **section 205** of the *Penal Code* and convicted her for the unlawful killing of Fredrick Otieno Osodo. I am now called upon to sentence her bearing in mind that the maximum sentence for the offence of manslaughter is life imprisonment.

2. After conviction I called for a sentencing report from the Probation Service. A report dated 21st May 2015 was filed. The report outlines the family background of the accused. She is married to the Moses Ochieng Matinde, the 1st accused, who was acquitted and has three children, the last born being 4 years old. After carrying out interviews in the community, the Probation Officer recommended as follows;

[T]he offender before the court is a young woman who has her whole life ahead of her. She has very young children who need her and their psycho-social development is paramount. She is remorseful and regrets the events leading to her arrest and asks the honourable court for leniency. Her family has promised to work with our office in her rehabilitation and help her abide all the courts provisions. I find the accused suitable for a non-custodial sentence preferably probation for a period the court may deem fit.

3. Mr Okoth, counsel for the accused, submitted that the circumstances of the conviction arose out of an incident of extreme provocation where she acted to save her husband who was under threat from the deceased who had attacked her brother in law with a panga and proceeded to attack her husband. In these circumstances, he submitted that the proper sentence was a non-custodial sentence.

4. The father of the deceased, John Otieno Osodo, gave a statement to the court. He stated that his son was murdered in broad daylight and that the court should consider this fact. He informed the court that his son was a young man who had come back to Kenya and had barely been home for a period of 6 days before he was killed. He stated that he did not have a grudge with anyone and it was the accused who planned to kill him and no amount of punishment would bring back his son.

5. Mr Oluoch, the learned Senior Assistant Director of Public Prosecutions, submitted that in the totality of circumstances, a custodial sentence was merited as the facts show that the force used was excessive and the knife used was a per se dangerous weapon. In his view but for technical reason, the charge of murder would have been sustained.

6. I have taken into account the submissions of both counsel and the sentiments of the victim's father. As I stated my judgment, the circumstances of the deceased's death arose out of an apparent land dispute and I found that in the circumstances, the accused was provoked to act in the manner she did. Although, she is a young mother and the probation service has recommended a non-custodial sentence, I must take into account the fact that a young man's life was lost and the court must express the society's disapproval of the taking of a life. A custodial sentence is therefore warranted in the circumstances to vindicate the value of life.

7. I therefore sentence the accused **EVERLYNE AKINYI MATINDE** to **2 years** imprisonment. Such term of imprisonment shall take into account the time the accused spent in custody before and during the trial and after conviction.

DATED and DELIVERED at HOMA BAY this 9th day of June 2015

D.S. MAJANJA

JUDGE

Mr Oluoch, Senior Assistant Director of Public Prosecutions, instructed by the Office of Director of Public Prosecutions for the respondent.

Mr Okoth instructed by G.S. Okoth and Company Advocates for the accused.