



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL CASE NO. 8 OF 2015

REPUBLIC

VERSUS

NAOMI NJOKI.....ACCUSED

JUDGMENT

The accused was charged with the offence of murder contrary to **section 203** as read with **section 204** of the **Penal Code**. According to the particulars of offence, on 20th day of April, 2015 at Likii Village in Laikipia County, the accused murdered Edward Maina.

After the accused person was charged, she engaged the prosecutor in negotiations and thereafter the two parties entered a plea agreement dated 27th July, 2015. These negotiations and the subsequent agreement were no doubt based on **section 137A** of the **Criminal Procedure Code** that provides for such negotiations and agreements. According to this agreement, the accused person agreed to enter a plea of guilty to a lesser charge of manslaughter. This plea was taken on 29th September, 2015 and the accused person was convicted on her own plea of guilty to the substituted charge of manslaughter contrary to **section 202** as read with **section 205** of the **Penal Code**. It follows that this judgment is on sentence only.

According to the particulars of the offence in the substituted charge, on 20th day of April, 2015, at Likii village in Laikipia County the accused person killed Edward Maina.

According to the state counsel, the facts upon which the offence against the accused person was founded were as follows:-

The deceased and the accused person were previously a married couple but that they had separated apparently because of the abuse and violence the accused had consistently been subjected to by the deceased. In a bid to escape from the abusive marriage, the accused together with her seven children initially moved from the matrimonial home to an alternative residence but the deceased followed her there and persisted in abusing her. Because of the deceased's conduct and the acrimonious relationship the two could not put up together; however, every time the accused moved, the deceased would always track her down and follow her, wherever she went. The couple's life became a nuisance and notorious to the neighbourhood to the extent that at some point no landlord was willing to rent his premises to the accused person anymore. Without anybody willing to take her in, the accused was forced to settle and live rough on the streets together with her children.

In acknowledgement of her plight, members of the public came to this family's rescue. They got the accused and her children off the streets and found them a relatively decent accommodation, at least for a

few weeks. When the accused person found her feet again, she rented a house of her own at Likii village, Laikipia County.

True to his character and for the umpteenth time, the deceased tracked the accused person to her new residence. When he arrived the accused person was away, fending for the children. Only the children were at home at the material time and as usual, he insulted their mother in their presence calling her a prostitute.

When the accused person returned home the children reported what had transpired. The accused took up the matter with the landlord and sought to know why he could allow the deceased into the compound, which apparently she shared with the landlord. The landlord informed the accused that in fact the deceased was asleep in his (the landlord's) house and he was going to wake him up.

Soon after the deceased woke up, a scuffle ensued between him and the accused; the latter stabbed him with a kitchen knife fatally wounding him. She then proceeded to report the case to the police at Nanyuki police station; the officers from this station took the body to the mortuary and charged the accused with the murder of the deceased.

The post-mortem report showed that the deceased died of severe haemorrhage due to stab wound on the chest involving the pulmonary and the cardiac. A death certificate number 356058 was issued.

In mitigation on her behalf counsel for the accused reiterated the facts as presented to court by the state counsel. She added that at the time of marriage of the accused to the deceased in 2008, the accused person had four children but had three more children with the deceased. Counsel submitted that the couple separated in 2012 because the deceased was hostile and a habitual drunkard. On the fateful day, so counsel submitted, the accused person was provoked; she stabbed the deceased but not with the intention to kill him. If anything, she always ran away from the deceased whenever he became hostile or unruly.

Of the accused person's seven children, the eldest was a house-help in Nairobi while the other five were in two different children's home. The last born who is a toddler was with the accused in remand prison. The accused herself was only 32 years old and in the counsel's view she should be given a chance to recalibrate her life. All the accused person's children are minors and except the first born and the suckling toddler with whom she was in the remand prison the rest of her children were in juvenile homes because there was nobody to take care of them. Counsel urged for a non-custodial sentence to allow the accused take care of her children.

Responding to the accused person's counsel's mitigation, counsel for the state submitted that she had nothing to say except to inform the court that the accused person was a first offender.

The penalty prescribed for the offence of which the accused is convicted is found in **section 205** of the **Penal Code**; it states:-

205. Punishment of manslaughter

Any person who commits the felony of manslaughter is liable to imprisonment for life.

No doubt the law prescribes a stiff penalty for the offence of manslaughter; however, it is clear that life imprisonment is the maximum sentence and the court is left with the discretion to impose any sentence less in severity than the maximum penalty prescribed. I reckon that in exercising its discretion the court will consider, among other things, the circumstances under which the offence was committed, whether the accused person is remorseful and if there are any mitigating circumstances that may call for lesser penalty than the maximum prescribed.

I have considered the circumstances under which the deceased was killed and the conduct of the accused person immediately before and soon after the deceased's death. I have also considered the mitigating circumstances, the most crucial of which, in my humble view, is that the convicted person has seven

children all of whom are minors in need of parental care. I gather from probation report filed in this court on 28th September, 2015 that these children are aged between 2 to 17 years; incarcerating their mother will obviously deprive them of this motherly care. Juvenile homes in which they are now accommodated cannot not make up for this much needed parental care to which they are not only entitled but which is also their constitutional right.

The convicted person is herself remorseful; I gather from her mitigation that she is willing to begin her life afresh. On the other hand, however, the offence for which she has been convicted cannot go unpunished lest justice will not be seen to have been done. Balancing the scales of justice as I possibly can in these circumstances, I hereby sentence the accused person to two years imprisonment except that this sentence shall not take effect unless during the said period of two years the accused person commits another offence. Subject to this sentence the accused is set at liberty unless she is lawfully held.

Signed, dated and delivered in open court this 9th day of October, 2015.

Ngaah Jairus

JUDGE