



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL CASE 6 OF 2011

REPUBLIC.....PROSECUTOR

-versus-

MERCY NYAMBURA
WANJIKU.....ACCUSED

SENTENCE

The accused person was initially charged with the offence of murder the particulars of which were that on 3rd day of February 2011 at Kiamwangi sub location in Mathira East District within Nyeri murdered Risper Wangari Nyambura.

She pleaded not guilty to the said charge. Subsequently the accused's advocate and the state entered a plea agreement which was filed in court on 3rd February 2012 whereby the charge was reduced to manslaughter. This plea agreement was accepted by the court and upon the facts being presented the accused pleaded guilty to the same and a plea of guilty was entered for the accused person by the court having taken into account that the accused who was represented by Mr. Karweru advocate had entered the plea voluntarily. The court therefore proceeded to convict the accused person on her own plea of guilty.

To assist this court in arriving at a just sentence I ordered that a probation report be filed in respect of the accused which was duly filed on 3rd May 2012 and which I have had the advantage of looking at.

The material facts upon which the accused was convicted were that on the material day the accused was called by her mother to go and take her two children who were then staying with her since she was relocating to Mombasa. The accused person who was then working as a house girl had then lost her job since her employer was also relocating having been transferred and at the same time she discovered that she was pregnant and her boyfriend who was responsible for the said pregnancy had abandoned her and withdrawn financial support, as it was her world had come to an end having been abandoned by the three people close to her and left with the additional responsibility of taking care of two young children and at the same time being pregnant.

She therefore devised a solution which was to kill both her children and herself by jumping into a river. She succeeded in killing the deceased but one child survived and her attempt to kill herself did not also succeed as she found people standing at the bridge from which she had intended to jump into the river killing herself.

Mr. Karweru in mitigation has beseeched the court to give the accused person a non custodial sentence taking into account the fact that the accused was in such a state of shock having been abandoned by all

those close to her. She has now given birth to twin girls and is of the view that prison is not the best place for her.

This view is supported by the probation report which also has recommended for non-custodial sentence.

I had the advantage of seeing the accused before me. She is a beautiful young girl who to me seems to be a victim of her beauty. She was born in 1989 and was therefore 22 years old. Her first born is aged 6 years which means that she must have been aged 16 years old at the time when a greedy man took advantage of her. At that tender age I am of the opinion that the accused person can not be said to have been prepared for life with children. She was at that age when she would have continued to play “kati” and “chamama” games. The big question to my mind is where is this man the father of this child?

I also note that the deceased who was then aged four years was born two years thereafter at a time when the accused was 18 years yet by another greedy man whose where about we have not been told.

At the time of commission of the offence she was also pregnant and the where about of this other man we are not told.

To my mind the accused seems to me to be somebody who was out looking to be loved and to be taken care of but found them all at the places.

Was she at that state of mind to be responsible for her action? My answer is a big no! Her world had fallen apart and to punish her for this action would be double punishment. Just as Jesus asked that woman who was found in the act. I also ask where are her accusers?

I have taken into account that she is a young girl who now has three children to take care of and to borrow the words of Mr. Karweru advocate it seems that she lost one girl and God in his wisdom and to test her gave her two more girls. I agree with the recommendation of the probation officer that she need rehabilitation and not jail. To my mind there is no doubt that the death of her child which will always remain a stigma in her life is enough punishment.

Having taken all this into account I therefore sentence the accused person to a probation period of two years under the supervision of District Probation Officer Nyeri Central and the District Children Officer Nyeri Central who would be able to counsel her and offer rehabilitation services required to assist her. I also order the District Children Officer to use their powers to track down these three men who took advantage of the accused person with a view to having them meet their obligation towards the children herein. And I therefore borrow the words of Jesus by telling the accused that go home but sin no more.

Dated at Nyeri this 17th day of July 2012.

J. WAKIAGA
JUDGE

Read in open court in the presence of Mr. Muhoho for Mr. Karweru for the accused and Miss Maundu for the state.

J. WAKIAGA
JUDGE