



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**CRIMINAL CASE NO.2 OF 2019**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**PETER NJOROGE MUTHUA.....ACCUSED**

**RULING ON SENTENCE**

1. The Accused person in this case was initially charged with murder contrary to section 203 as read with section 204 of the Penal Code. The offence was reduced to manslaughter contrary to section 202 as read with section 205 of the Penal Code following a successful plea bargain agreement signed by the Accused person on 28/4/2021.
2. The particulars of the charge were that on 10/1/2019 at KAHURURA village in Londiani sub-county within Kericho County the Accused person unlawfully killed SAMUEL MAINA NJUGUNA.
3. The facts of the case as given by the prosecuting counsel were as follows;

*The accused person was a boyfriend to Ann Napao and have been cohabiting for over one year. In the month of July 2018, the accused person proposed to Ann Napao that he wanted to marry her and live with her in his house. Ann told the accused person to give her time to think about the proposal but did not give him timelines.*

*After a few months the accused renewed the proposal to Ann but she kept assuring him that she still loved him and that he should wait a bit. The accused person became suspicious that Ann could be having a love relationship with someone else.*

*On 10<sup>th</sup> day of January 2019 at around 1830hrs, the deceased who was a neighbour to Ann went to visit Ann to ask her to assist his mother to milk her cow because he was drunk and could not do it. Ann and the deceased left to go to the deceased's mother home and as they were walking along the path, the accused waylaid them from the back and Ann saw him approach them while walking in hurry. The accused suspected that it was the deceased who was having a love affair with Ann.*

*Ann asked the accused what was wrong but the accused said nothing. He then removed a small bottle from the pocket of his trouser and consumed the liquid content that was in the bottle which was suspected to be poison. He then held Ann from her shoulder and removed a knife from his trouser and used it to stab Ann on her chest.*

*On noticing that the accused had attacked Ann, the deceased joined to rescue Ann and the accused turned on him and stabbed him on the stomach as they were struggling and wrestling. The screams from Ann and commotion attracted neighbours who dashed to the scene. When the accused saw the neighbours approach the scene, he ran away to his house and locked himself inside. Neighbours found both Ann and the deceased lying down unconscious and bleeding profusely. They rushed them to hospital using motorbikes at Londiani district hospital.*

*The incident was reported to Londiani police station later that day and police with the help of neighbours went to the house of the accused with the aim of arresting him. They entered his house and found him lying unconscious. They rushed him to Londiani district hospital where the deceased and Ann were admitted. An hour later, the deceased died while undergoing treatment at the same hospital. The results of tests that were conducted revealed that the accused person had consumed poison. Ann's condition worsened and was referred to Kericho County and Referral hospital for further treatment.*

*The body of the deceased was transferred to the mortuary of the same hospital for further treatment. The body of the deceased was transferred to the mortuary of the same hospital where postmortem was conducted by Dr. Collins Biwott who noted cut wound on the left side of the stomach about 3cm long and 5 cm deep. He formed the opinion that the cause of death was hemorrhage from the right ventricle leading to haemopericardium, haemothorax and exsanguinations, cardiac tamponade may have led to cardiac failure.*

*The accused person was treated and discharged three days later. The police arrested him while in hospital after being discharged and charged with the offence of murder contrary to section 203 as read with section 204 of the penal code which has now been reduced to the offence of manslaughter contrary to section 202 as read with section 205 of the penal code.*

*Meanwhile condition of Ann improved and was discharged from hospital 8 days later.*

4. In mitigation the learned counsel for the Accused person told the court that the Accused person is sincerely remorseful for the offence he committed and further that the Accused person has now reformed and even sat for his KCSE during the three years he has been in custody.
5. The court was also told that the Accused person was drunk at the time he committed the offence and he is asking for a non custodial sentence.
6. The Probation Officer filed a Presentence Report in court on 5/7/21 detailing background of the Accused person. According to the said Report the Accused person is aged 41 years. He was a “Mkokoteni” water vendor at Londiani at the time he committed the offence and used to overindulge in alcoholic drinks and cigarettes.
7. I have considered the mitigation as given by the Learned counsel for the Accused person. I have also considered the fact that the Accused person is remorseful and that he pleaded guilty and saved court’s time.
8. However, the offence the Accused person committed is a serious one considering that he killed an innocent person on mere suspicion that he was having an affair with his girlfriend.
9. The Accused person also stabbed his girlfriend and he drank poison in attempt to commit suicide.
- 10. The offence of manslaughter is punishable by life imprisonment. Section 205 of the Penal Code provides that “Any person who commits the felony of manslaughter is liable to imprisonment for life.”**
11. Taking into account the mitigating circumstances in this case the Accused person is sentenced to (10) years imprisonment.
12. The sentence to start from the time the Accused person was first arraigned in court.
13. For avoidance of doubt, the three (3) years the Accused person has been in custody will be considered in the computation of the ten (10) years sentence.
14. Right of appeal against sentence (14 days) explained.

**Delivered, dated and signed at Kericho this 20<sup>th</sup> day of December, 2021.**

**A. N. ONGERI**

**JUDGE**