

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCR NO. 56 OF 2017

FORMERLY MACHAKOS HCCR NO. 44 OF 2015

REPUBLICPROSECUTION

-VERSUS-

GERALD MUTUKU NYALITA1ST ACCUSED

JACKLINE MWENDE MUTUA alias

JACKLINE MWENDE KITHOME 2ND ACCUSED

RULING ON SENTENCE

1. **Jackline Mwende Muta alias Jackline Mwende Kithome** was charged and convicted of the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The deceased in this case was her husband.
2. In her mitigation she asked for leniency. The court called for a presentencing report which has been filed by the County Probation Officer Mr. Munyasia.
3. I have studied the said report. It confirms that indeed the deceased and accused had three (3) children together. The children are aged between 10 years and 17 years. The report also confirms that the deceased and accused led a turbulent married life as the deceased barely provided for the family. The area assistant chief handled a number of their marital issues.
4. Mr. Munyasia interviewed the local administration and members of both families.

The deceased's family members have shared the responsibility of bringing up the children by letting three of the deceased's siblings have one of the children each. This is an unnecessary burden loaded on them because the children have been separated and can no longer live together as one family.
5. The family of the deceased is ready to receive the accused home so that she can take care of her children. This in no way overlooks the cruel act of the accused in taking away her husband's life in cohort with other persons. She should have thought twice before doing that.
6. I have taken into account the period the accused has been in custody since 21/05/2015 (5 years + 7 months). Her children have not been with her for all this period. Besides the recommendation in the presentencing report, the main reason that has made this court consider a non-custodial sentence for the accused is the fate of the innocent children who already lost a father. The accused has an explanation to make to them, hoping they will find it in their hearts to forgive her.
7. The upshot is that **the accused is placed on probation for three (3) years under the supervision of the County Probation Officer. Conditions of the probation order explained.**

Delivered, signed & dated in open court this 18th day of December 2020, at Makueni.

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H. I. ONG'UDI

JUDGE